INSPECTOR GENERAL'S REPORT ON PAYMENT TO INCOMPETENT VETERANS

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMPENSATION, PENSION, AND INSURANCE

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

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INSPECTOR GENERAL'S REPORT ON PAYMENT TO INCOMPETENT VETERANS

THURSDAY, MARCH 24, 1988

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:02 a.m., in room 334, Cannon House Office Building, Hon. Douglas Applegate (chairman of the subcommittee) presiding.

Present: Representatives Applegate, Johnson, Evans, and McEwen.

OPENING STATEMENT OF CHAIRMAN APPLEGATE

Mr. APPLEGATE. The Subcommittee on Compensation, Pension and Insurance will be in order.

Good morning to everybody. We welcome everybody to our first meeting of the second session of the 100th Congress.

The purpose of this oversight hearing is simply to review and to discuss issues regarding benefits payable to incompetent veterans and, particularly, to evaluate a recommendation made by the Veterans' Administration's Inspector General to limit the amount of such estates or prevent such sums from being inherited by distant relatives.

In summary, the IG states that, as of 1987, there were some 14,800 incompetent veterans rated totally disabled due to service-connected conditions who had no spouse, child, or dependent parent. Approximately 24 percent of these veterans have estates in excess of $100,000, and close to 50 percent are in excess of $50,000.

The concern raised by the Inspector General is that, under State law, a great number of these estates are being inherited by distant relatives. It is estimated that $648 million in assets derived from VA funds will be inherited by relatives other than a spouse, child, or dependent parent. The IG estimates that Federal outlays could be reduced by about $156 million in the first year and about $1.9 billion during the life of the expectancy of the affected veterans if legislation were enacted to limit the amount of VA derived funds in the estates of these incompetent veterans.

The VA Chief Benefits Director has opposed the Inspector General's recommendation on the basis that it would discriminate against incompetent veterans and create a burden on the VA. The

Chief Benefits Director further indicates that, although the IG's proposal would reduce outlays, it would not result in savings.

I understand that the issue was referred to the Administrator who concluded that proposing the Inspector General's recommendation would not be in the best interests of the Veterans' Administration.

I am deeply concerned, as are others to whom we have spoken, that, in a time when we are facing almost certain budget cuts, veterans' benefits, funded by Federal tax dollars, may ultimately be winding up in the hands of people whom the veteran barely knew. That is why we need to take a close look at what may be reasonable—and I emphasize "reasonable"—way to address the problem.

Time and time again, the Veterans' Administration has come up with proposals that would penalize or tax veterans. For once, however, we may actually be looking at a workable and fair approach consistent with the purposes of the VA's compensation and pension programs and governmental interests that would save money but not penalize veterans.

It seems after the past week or so that veterans' programs are getting short-changed because of budgetary restraints. Yet, when we take a look at this particular program and two other programs where there are large numbers of veterans who are illegally receiving benefits, many of the other programs are being drained of necessary monies to continue their programs at present day levels. We can see it in the medical programs, we can see it in the DVB programs, and we can see others which are being cut back because of shortage of funds.

There is no legislation pending that would implement this proposal. However, I believe the subcommittee has an obligation to veterans and to the American taxpayer to explore options of this sort. That is why we are here today.

I do want to make it clear, again, that this is an oversight hearing; it is not a legislative hearing. Be assured that the subcommittee will explore this issue in a most cautious manner and with due regard to the concerns set forth by the Chief Benefits Director as well as the various service organizations.

I especially want to welcome the members of our two panels of veterans' service officers and district counsels to this hearing, and thank you for taking the time and trouble to come to Washington and share the experience with us of the problems in your areas. I hope that we can look into your minds and pick at them a little bit and come up with some kind of an idea and feeling of the magnitude of the issue.

[The prepared statement of Chairman Applegate appears on p. 37.]

Mr. APPLEGATE. Having said that, it is my understanding that Bob McEwen, who is the vice chairman of the subcommittee, will be joining us, but he isn't here right now. I do understand that he has a statement which he wants entered into the record. Without objection, of course, that will be so ordered.

[The statement of Congressman McEwen appears on p. 40.]

Mr. APPLEGATE. We also have one of our members who has joined us, Mr. Tim Johnson. We are always happy to have him.

Tim, I would recognize you for anything that you might like to add at this time.

Mr. JOHNSON. I really have nothing to add, Mr. Chairman, other than to commend you for holding the hearing. I think this is a very important issue. I am looking forward to the testimony and analyzing the testimony on the benefits issue for incompetent veterans and the recommendations from the VA's Inspector General.

Mr. APPLEGATE. Thank you very much.

With that, then, we will begin with our first witness this morning who is already seated at the desk. We have Mr. Renald Morani, Acting Inspector General, who is accompanied by Mr. Ken Furukawa, Assistant Inspector General, and you may begin and make your presentation.

STATEMENT OF RENALD P. MORANI, ACTING INSPECTOR GENERAL, VETERANS' ADMINISTRATION; ACCOMPANIED BY KENNETH T. FURUKAWA, ASSISTANT INSPECTOR GENERAL, VETERANS' ADMINISTRATION

Mr. MORANI. Thank you, Mr. Chairman.

I am pleased to be here today to discuss the results of our audit of Estates Maintained for Incompetent Veterans.

In 1980, the former Chairman of the House Committee on Veterans' Affairs wrote the Comptroller General requesting an audit to determine the extent the incompetent veterans' estates held by fiduciaries would be inherited by relatives other than the immediate family. The letter expressed concern about such inheritance, stating "Congress intended that distant relatives should not be enriched through benefits intended for veterans or their immediate families. However, large estates consisting of VA benefits are evidently still enriching distant relatives who may have had very little to do with the veteran and were not affected by his service to the United States."

The General Accounting Office responded to this request at that time and found that an estimated $541 million in VA derived funds in incompetent veterans' estates would be inherited by heirs other than spouse, children, or dependent parents. The GAO recommended at that time that Congress enact legislation to limit who may inherit VA derived funds in the estates of incompetent veterans.

The Veterans' Administration management did not support the legislation proposed by GAO because of concern about law suits by potential heirs and the increased work load within the VA required to recover funds from veterans' estates.

In 1987, the Office of Inspector General completed an audit of estates maintained for incompetent veterans. The audit focused on the 14,800 incompetent veterans receiving total disability compensation who have no dependents. We analyzed a statistical sample of 968 such veterans and found that an estimated $648 million in assets derived from VA compensation benefits are accumulating in the hands of fiduciaries.

At the time of the veteran's death, these funds would be distributed under the laws of the States which permit inheritance by remote heirs. Our audit cited examples of veterans' estates inherited by distant relatives, some of whom had little or no contact with

the veteran. Others, we found, resided in foreign countries and had never met the veteran.

We recommended that the Chief Benefits Director propose legislation that would limit the amount of funds held by fiduciaries subject to inheritance by relatives other than spouse, children, or dependent parents.

The proposed changes to current law would offer adequate protection to the incompetent veterans and could be administered without a significant increase in workload. The proposed legislation would:

(1) Redirect disability payments for incompetent veterans without dependents to a trust account administered by the Federal Government or treat such payments as a contingent liability when liquid assets under the control of the fiduciary exceed a prescribed upper limit, such as $25,000, and resume payments directly to the fiduciary when liquid assets fell below a prescribed limit, such as $10,000.

(2) It would restrict inheritance only to spouse, children, or dependent parent.

(3) It would provide for reimbursement of all funds on account to the veteran if competency is restored.

The proposal would not affect the amount of money for the care and maintenance of the incompetent veterans. If disability compensation payments were directed to a trust account or treated as a contingent liability, the fiduciary would have sufficient funds in the estate to provide for the veteran's welfare.

There would be no impact on the day-to-day life of the veteran, only on the size of the estate under the fiduciary's control. It must be emphasized that this proposal would not deny or limit any benefits to the veteran beneficiary. It would simply restrict the amount of assets controlled by the fiduciary and provide for some assets to remain under the control of the Federal Government in a manner similar to the personal funds of patients' accounts.

The VA's General Counsel stated that his office had no legal objection to our proposal. The Director of the Office of Budget and Finance recommended that legislation be considered to suspend payments when estates exceed a legislated maximum level.

The Chief Benefits Director expressed concern that such legislation would constitute inequitable treatment of incompetent veterans and concern about the cost of administering the proposed legislation. The issue was referred to the Administrator who concluded that proposing such legislation would not serve the best interests of the Veterans' Administration.

If the inheritance of funds derived from VA benefits by distant relatives is considered an unintended and inequitable outcome of the VA's program to protect the financial interests of incompetent veterans and conserve their estates, some change is necessary. Clearly, these funds were appropriated to benefit veterans and their dependents. To the extent that these benefits ultimately pass to distant relatives, the purpose for which the funds were appropriated is not achieved.

The legislation recommended would minimize inheritance of VA derived funds by remote heirs without adversely affecting the incompetent veteran or administratively over-burdening the VA.

That concludes my oral statement, Mr. Chairman. We will be pleased to respond to any questions you may have.

[The prepared statement of Mr. Morani appears on p. 42.]

Mr. APPLEGATE. Thank you very much, Mr. Morani.

I was just looking over some figures that I was putting together here having to do with the IG's office. Of course, you were in earlier this week or last week—

Mr. MORANI. Last week.

Mr. APPLEGATE. And coming forth with your audit and report on the CHAMPVA program in which there are $43 million. On this, in the first year, you are talking about $156 million. Then, were you involved in the revelations by Senator Murkowski on the under-reporting of $1 billion in income or was that a GAO report?

Mr. MORANI. It was a GAO report. We have also been in that area for the last three years and our computer matches with State earnings have disclosed similar over-payments.

Mr. APPLEGATE. I am looking at when you just take the $43 million in CHAMPVA, the $156 million in the proposal that you have here, and I think Senator Murkowski's was an illegal payout of about $180 million or so. We are talking about $379 million a year. That is near the amount that we are talking about that we are going to have to try to find in this year's budget just to try to maintain current levels if we possibly can.

So, it seems to me there are monies out there. Of course, with others coming in with new programs, we are going to have to find it through reconciliation. We have to find it and take it away from some other veterans' programs.

I appreciate the fact that we can find monies through various means where people take advantage of the system. I guess that has been historical, but I think it is time that we stop and we make sure that those veterans who most deserve these programs are going to have access to those programs and not be denied because of a lack of money where people who don't deserve them and who are falsifying reports are being benefitted.

Let me ask you this: During the on-site reviews of the various stations, how many guardianship folders were reviewed?

Mr. MORANI. The actual review in our test was 968 in our sample. We reviewed all 968 estate summaries.

Mr. APPLEGATE. How many are available to you to review? Is it 968?

Mr. MORANI. The total was 14,800, sir.

Mr. APPLEGATE. Oh, I see.

Mr. MORANI. Our sample was 968, and we reviewed folders against that sample.

Mr. APPLEGATE. I note that in your statement in your report of May of 1987 that your office is continuing its review of the VA's fiduciary program and will examine the effectiveness of the internal controls in the administration of the program. What is the current status of your review, and do you anticipate the issuance of a separate report?

Mr. MORANI. Yes, sir, we do expect to issue a separate report. That will be a phase 2 of the overall review of fiduciary accounts and deals mainly with validating the assets that are reported.

Mr. APPLEGATE. When do you think you would be able to submit that?

Mr. FURUKAWA. We are having a little bit of difficulty in getting access to records of four fiduciaries. I would estimate that within two months, we should complete our field work if we are able to get these records on a timely basis. Within 45 days after we complete our field work, we normally have a draft report.

[See p. 48.]

Mr. APPLEGATE. Is there any particular reason that you are having difficulty in getting the information that you need?

Mr. FURUKAWA. We are not able to pinpoint the exact reason why they have not been forthcoming, but we are in the process of preparing subpoenas.

Mr. APPLEGATE. Let me ask this: Does the Chief Benefits Director dispute any of the figures in your audit as to the number of cases involving veterans with no spouse, child, or dependent parent or your estimate of the relative sizes of the estates? Do you know whether he made any attempts to verify or validate these figures or results?

Mr. MORANI. Mr. Chairman, I don't believe we have had any serious difficulties on the facts themselves as far as the review and the information received from the folders. The information that we have and the listings in our records are available for DVB, and I am sure they have been shared during the course of the audit to ascertain that the figures that we have or any question regarding the reported amounts, if there were any questions, were resolved with operational people.

Mr. APPLEGATE. Would you tell us about the computer programming changes in the C&P system that would be needed under your proposal?

Mr. FURUKAWA. We didn't really get into the details of the basic changes that would be required to the computer program. What we did was to try to estimate, on the basis of the number of veterans involved in our review, the veterans that would be impacted by our proposal. We are talking about 9,000 to 10,000 veterans.

Initially, it would take a certain amount of effort to establish the accounts and the criteria under which payments would be terminated and then re-established, but we did not get into the details of the exact adjustments that would be required to the computer program.

Mr. APPLEGATE. It doesn't seem like a big deal, though. Is that right?

Mr. FURUKAWA. From our viewpoint, no, sir.

Mr. MORANI. Mr. Chairman, I would point out that the impact as we reported it would be on about 9,200 of the 14,800 veterans' accounts.

Mr. APPLEGATE. Thank you very much.

I see that my very amiable and tall, good-looking colleague from Ohio, and potential United States Senator, decided to come back to the people's house.

Mr. MCEWEN. Thank you, Mr. Chairman. I appreciate that.

I am sure we all look forward to these hearings, and, as you know, we cannot anticipate what will happen on a Thursday, and I regret that the House is not in session today, but I thank you all

for coming, because this is a matter of great importance, and I would express again how delighted I am that the chairman has chosen to hold a hearing even though we do not have legislation on this subject.

A couple of questions come to mind. Mr. Vogel has, I believe, in his testimony made some reference about a constitutional question being involved. I cannot be here for his testimony and will have to pose the question to the Administration later on, but can you give me some idea as to what his concern might be on that?

Mr. MORANI. I am not that acquainted with the constitutional aspects, but I suspect that it is related to the inheritance laws and the role the VA would have in the impact of restricting payments to fiduciary accounts and in the transfer of fiduciary accounts under State law.

Mr. MCEWEN. The General Counsel has not expressed an objection, has he?

Mr. MORANI. The General Counsel did not express any objection to our recommendations, sir.

Mr. MCEWEN. I might point out that a presidential candidate in 1972 proposed a 100-percent confiscation of inheritances at death for all Americans and not just for veterans, and I am not sure there is a constitutional question there even though there is a strong philosophical one.

In your testimony, you mentioned that large estates consisting of VA benefits are evidently still enriching distant relatives who may have had little to do with the veteran. Have you gone into that as to how one determines whether or not there is a close relationship between the veteran and a relative?

Mr. MORANI. The records that we had available to us on those particular examples had information in it as to the ultimate disposition of the estate and the relationship that the recipient had with the veteran.

Mr. MCEWEN. That is able to be determined before the estate is probated, I take it.

Mr. MORANI. It is probably during the probate period, but at least there was information at the end of the process as to the ultimate disposition of the estate.

Mr. MCEWEN. You mentioned on page 7 of your testimony that the issue was referred to the Administrator who concluded that proposing such legislation would not serve the best interests of the Veterans' Administration. Would you care to elaborate on that? I don't catch it right off as to how he feels the Veterans' Administration will be damaged.

Mr. MORANI. Well, I was not personally involved in any discussion of that decision, but I assume that it was a policy decision at that level and at that time with the Chief Benefits Director.

Mr. MCEWEN. It is not your custom to publicly disagree with the Administrator, is it? How many times have you done this?

Mr. MORANI. Well, we have had unresolved issues in prior audits, and the final resolution goes both ways, sir. In some cases, the Administrator has concurred with the Office of Inspector General, and in other decisions, he has taken a different view. The decision is ultimately his. We only make recommendations.

Mr. McEWEN. In other words, sometimes he is right and sometimes he is wrong. I understand.

Thank you very much for your testimony. It is most helpful.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. McEwen.

Mr. Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Morani, in your statement, you noted that since 1983, your office has investigated over 100 cases involving theft or misuse of funds by fiduciaries. Do you have any idea how many of these cases involve veterans having no dependents?

Mr. MORANI. I do not have that information at this time, but we could provide it for the record, sir. We could make an analysis of those 100 or so cases and see if the information is available.

Mr. JOHNSON. I would appreciate it very much if you could provide us with those numbers and also with a summary of the cases that actually do involve veterans with no dependents.

Mr. MORANI. Yes, we could do that.

[Subsequently, the Veterans' Administration submitted the following information:]

During the period October 1, 1982, to March 25, 1988, the VA Office of Inspector General initiated 122 investigations of the Fiduciary Program. The available records do not indicate how many of the cases involved veterans having no dependents.

Mr. JOHNSON. In the instance of theft of misuse of funds by fiduciaries, do you have any notion of the 100 that you have investigated what kind of loss was sustained?

Mr. MORANI. The total dollar value?

Mr. JOHNSON. Yes.

Mr. MORANI. The records would have that. I don't have that available at this time, but we could also provide that for the record.

[Subsequently, the Veterans' Administration submitted the following information:]

The total dollar value of the potential fraud in the 122 investigations of the Fiduciary Program initiated by the Office of Inspector General amounted to approximately $2,040,000.

Mr. JOHNSON. Are the fiduciaries governed by State law in terms of bonding and reporting to the courts, or is there a Federal guideline which—

Mr. MORANI. The vast majority of incompetent veterans without dependents and with estates over $25,000 have court appointed fiduciaries who are bonded under state laws. Any recovery of theft or misused funds occurs under that bond.

Mr. JOHNSON. The only other question I have is whether you would care to elaborate on the notion that restricting inheritance of benefits to incompetent veterans and holding them apart from benefits to competent veterans seems to set them into a special class. I wonder if you would comment on that.

Mr. MORANI. The primary benefit that we were looking at is the adequate handling of the estates and using the criteria that the distribution of the veterans' estates should be to the immediate family. Following that, a judgment should be made in terms of whether distribution of estates to these remote heirs is satisfactory

from the incompetent veterans' point of view, past legislative history and from the GAO reviews on this issue.

Mr. JOHNSON. Very good. I don't have anything further.

Mr. APPLEGATE. Thank you very much, Mr. Johnson.

We have had join us one of our very active members of the committee, the chairman of the Oversight Subcommittee, Mr. Lane Evans.

Mr. EVANS. I have no questions at this time, Mr. Chairman. Thank you.

Mr. APPLEGATE. Well, gentlemen, thank you very much for your report to the committee. We consider it very valuable, and thanks again for being before the committee.

Mr. MORANI. Thank you, sir.

Mr. APPLEGATE. The first panel that we will have will consist of Mr. Patrick Nerpouni, Veterans Services Officer of the Boston VA Regional Office; Mr. James W. (Bill) Bryant, Veterans Services Officer of St. Petersburg, Florida Regional Office; and Mr. Robert Ziegenhine, Veterans Services Officer of the Cleveland VA Regional Office.

Gentlemen, welcome to the committee. I would appreciate it if each of you would identify yourself and let us know who you are so we can be better acquainted.

Mr. ZIEGENHINE. I am Bob Ziegenhine, a Veterans Services Officer at the VA Regional Office in Cleveland. I have worked at various offices from the smallest in White River Junction, Vermont to the largest in the fiduciary program in Cleveland.

I have been a Veterans Services Officer since 1974.

Mr. BRYANT. I am Bill Bryant, the Veterans Services Officer from St. Petersburg, Florida. I have been there since 1980. Before that, I was in Jackson, Mississippi for five years; two years in Manchester, New Hampshire; and one year in Los Angeles.

Mr. NERPOUNI. I am Patrick Nerpouni, and I am the supervisor of the fiduciary unit representing the Boston Regional Office. I have been with the VA since 1972, and for the past 12 years, I have had first-hand experience in fiduciary matters.

Mr. APPLEGATE. Thank you very much, gentlemen. I appreciate that little bit of background.

You may proceed as you wish.

STATEMENT OF ROBERT ZIEGENHINE, VETERANS SERVICES OFFICER, CLEVELAND, OHIO VETERANS' ADMINISTRATION REGIONAL OFFICE

Mr. ZIEGENHINE. In the Cleveland Regional Office, we reviewed the files and did some statistical analysis. We have approximately 5,300 wards on the rolls which is the largest in the VA system. Of those, approximately 3,200 are veterans.

During the last two years, we closed 1,400 cases. This is all types of cases that were being closed. Of these, 132 were veterans who deceased.

The average amount of the estate of veterans who died during that two-year period was approximately $70,000. Of that, approximately $36,000—in excess of $36,000 were VA derived funds and

nately $33,000 were non-VA derived funds, funds accumu-
m other sources such as Social Security.
ve a wide variety of estates from a quarter of a million dol-
n to nothing with veterans who now are living in Ohio
e no close relatives as defined by the IG as close relatives,
some of these persons who are not close relatives do have
lose relationship with the veteran. As such, they stand in
e of close relatives, whereas in some cases, what is defined
relatives we find want nothing to do with the veteran.
PPLEGATE. I am sorry, how many did you say? You say of
you said that there were no close relatives?
EGENHINE. No, we had 132. I don't have the number of—
PPLEGATE. 132 that had deceased.
EGENHINE. These were deceased veterans.
PPLEGATE. Last year?
EGENHINE. During the two-year period. I don't have figures
umber. I could provide that if you like.

ENT OF JAMES W. (BILL) BRYANT, VETERANS SERVICES
ER, ST. PETERSBURG, FLORIDA VETERANS' ADMINISTRA-
EGIONAL OFFICE

RYANT. We did a review in St. Petersburg also, and if you
ave a fact sheet that one of the staff could hand you, and
t have to try to remember the statistics.
February 19, 1988, we had 5,282 fiduciary cases. Almost
them were legal custodians. That means that it was not
the court, that the VA determined they were not capable
ng their own financial affairs.
d 214 that were supervised direct pay. This means that we
veteran directly and monitored his use of those funds for a
d period. If we found that he was capable of handling his
ve may discontinue the supervision or we may lengthen
that we supervise.
ve had 901 spouse payees and 167 institutional awards.
ant we paid to a nursing home or some other facility. We
orporate court fiduciaries. That meant that the court had
l a bank or some other financial institution to handle the
funds.
d 925 individual court fiduciaries. In Florida, the court
ire that there be an annual accounting on all of their fi-
ases.
eans that of the total amount of guardianships we have,
e accountings on about 23 percent of those. Those are the
the court requires an accounting on and also our own cri-
ired accounting for.
e for one reason or another about 80 cases per month in
Last year, we had 35 cases that were closed because of
at is about 16 percent of those that we do accountings on
2.9 persons per month.
uciary cases requiring accounting over the 12 months we
ntings totalled 1,360. We found the total estates to be
2 for an average total estate per case of $43,880 per
pproximately 50 percent of that estate was derived from

VA funds. Therefore, the VA estate would be approximately $22,000.

In the last 12 months, of the 35 cases that we closed due to the death of the beneficiary, their average income for the year was $1,237 per year from the VA, $243 from other sources. Their average estate was $25,104. Their other estate was $24,752. So, it is around 50 percent.

With regard to the heirs, in one case, there was one spouse. One had two helpless children, there were eight sons or daughters, there were five mothers or fathers—we didn't determine if they were dependent or not, there were 17 brothers or sisters, one uncle, one nephew, and one had no next of kin in the record.

The total VA estates were $878,631. The non-VA estates were $866,307, for a total combined estate in those 35 cases that died during the last 12 months of $1,744,937.

Since 1983, we have had six cases with potential escheat to the government in the State of Florida for a total of $128,280.50. What has actually escheated in that period has been $5,504.50. There is another potential $16,776 for a total of $22,280.50. That which has been distributed to distant heirs has been $106,000 since 1983.

Of course, all of these are potential escheats to start with, but once we file we see relatives coming from other places that we are not aware of.

Those are the statistics that we reviewed and the findings. I am not prepared to discuss or tell you about any specific cases, because I didn't research any to bring with me today.

Thank you.

[Material submitted by Mr. Bryant appears on p. 80.]

STATEMENT OF PATRICK NERPOUNI, VETERANS SERVICES OFFICER, BOSTON, MASSACHUSETTS VETERANS' ADMINISTRATION REGIONAL OFFICE

Mr. NERPOUNI. Mr. Chairman and members of the committee, I would like to thank you for the opportunity to be here today and participate in these hearings.

Secondly, I would like to say that the IG should be commended on their report. It is certainly, at first reading to the untrained eye, a rather interesting piece of paperwork.

However, what I would like to get across here today, if I may, is my 12 years of first-hand experience in dealing with fiduciary-related issues at the field station in Boston. From 1976 to 1981, I was a field examiner, and from 1981 up to the present, I have been supervisor of the fiduciary unit.

Some of the areas of concern that I see in the IG's report center primarily around four areas: One of equity, one of family, one of administration, and one of the mission. If I may, I would like to give you a little bit of my perception, or a little bit of information as to why I have some concerns in these four areas.

In the area of equity, I see that the report, from my own perception, tends to treat the incompetent veterans differently from individuals. There are many instances, certainly, where incompetents have large estates, but I also believe there are probably many instances where competent individuals have large estates also.

To further that point, I would like to cite for you the following two examples:

I know of at least two cases in which two different individuals have estates in excess of $100,000, and they have been long-term institutionalized at VA medical facilities in Massachusetts, and they are still receiving their 100 percent gratuitous monthly benefit payments. They are single. They have no spouse, no children, no parents. Yet, they still are receiving, or will be permitted to receive, the compensation benefit payment in addition to the outlay that it costs us to maintain these individuals in the hospital.

One particular case is a veteran who is single, receiving $28,000 a year in gratuitous monthly benefit payments from the agency. The cost of care at the Veterans' Administration medical center at Bedford, Massachusetts is approximately $64,000 a year for her care. That is about $100,000 a year that is going out in that particular case.

She also has a personal estate of over a quarter of a million dollars.

The issue of equity, for me, is a real issue, because I believe that the reason it is so easy for anybody to focus in on incompetent veterans is because we collect statistics. We have more information collected and gathered on that class of individuals than we do on competent individuals.

Second, I kind of take some exception to the issue of family, or at least the way some people perceive the closeness of the bond that exists between certain family members. I find it a little difficult after having had 12 years of first-hand experience to believe that somehow, in some of these cases, the relationships that have evolved over the years between the incompetent veterans—and many incompetent veterans, as you are aware, are single—so the relationship that has evolved from the time of birth with their siblings doesn't somehow mysteriously disappear at majority.

In many of these instances, these siblings are their family. They still retain that close family bond. They are the people who are perhaps as close if not more close than some spouses that I personally have had some experience with over the past 12 years.

I should say I can appreciate the fact that there have been instances where large estates have gone to remote heirs. We are all aware of that, and I don't think we are trying to hide that fact. However, what bothers me about the proposal is the limitation of the strictly defined aspect that only the spouse or children or dependent parents should be the only rightful people to inherit when, in fact, there would be no limitation or anything else like that concerning competent veteran beneficiaries.

They may leave their money to whomever they wish, and there is really no way we are going to know who those individuals are, whether it is a close family member or a remote heir or something else.

I just feel that what the IG report failed to recognize was that there are certainly, besides spouses, children, and parents, a number of siblings and other relatives that have devoted many, many years of love and compassion and service to their brothers and sisters. I think to somehow not recognize that is somewhat unjust and unfair.

The other problem I have with this is basically in the area of administration. I think perhaps it might be a difficult burden on field stations, at least from my own perspective, to try to monitor or administer this type of proposed package. I also believe that it would probably, notwithstanding whether or not we do anything about limiting inheritance to remote heirs—create some litigation or unexpected workload for the district counsels at the field station levels also.

I don't think district counsels at the field station levels have been given the opportunity or expressed their concerns. I know the report points out that the General Counsel had been queried about it.

The other part of it that bothers me is that after 64 or 65 years of service that the fiduciary program has provided since its original inception back in 1924, I think that for us to put a dollar cap on the amount of benefits these individuals can receive would somehow turn the 64 or 65 years of friendship that we have had with the incompetent veterans and with their fiduciaries into a sort an adversarial position which may somewhat diminish or make it more difficult for us to do our jobs.

I think it will also distort our primary responsibility. The mission, from my perspective, is to protect and assert the rights of the incompetent individual. To me, you can't limit rights to just monetary benefits, because I believe that we try to advocate their rights in all areas.

Thank you, sir.

Mr. APPLEGATE. Thank you very much, gentlemen. We really appreciate the input and the facts and the figures.

I have a couple of questions for you, but you had mentioned something or maybe I misunderstood what you said. You were talking about this is a matter of getting some information here and talking about an institutionalized veteran who would still be receiving full benefits. Competent?

Mr. NERPOUNI. Competent, long-term institutional, single.

Mr. APPLEGATE. Okay. I misunderstood what you said.

I heard you mention the fact that you generally agreed with the IG's report?

Mr. BRYANT. I did not comment on that.

Mr. APPLEGATE. Did I hear somebody comment on that?

Mr. NERPOUNI. You probably heard me, sir. I didn't disagree with it. I have some areas of concern with it.

Mr. APPLEGATE. Does Cleveland, Ohio have a voice on that?

Mr. ZIEGENHINE. I think the report that the IG did is somewhat simplistic in that the issue is a lot more complicated than simply saying we are going to stop paying benefits when an individual's estate reaches a certain point. The administration of that program would balloon, and the difficulty of establishing exactly what estates were there to be used would be very difficult.

Mr. APPLEGATE. Do you all agree that there is a buildup of a considerable amount of money from the benefits along with a pretty sizable estate in a lot of these.

Mr. BRYANT. That is correct. There is build-up of estates, but I am a little concerned about the estimate of the number of estates

that are involved in this category. Personally, I don't think we have that many of our veterans who have that great of an estate.

Mr. APPLEGATE. So, you are questioning the IG, is that it?

Mr. BRYANT. That is correct. I would. I am also concerned that if we implement the recommendations as they suggest or recommend, I think it is going to put us in a position of where our relationship and our credibility with the State courts is going to be suspect, and I think also probably with some of the financial communities and institutions, too.

It is going to be more difficult for us to locate and appoint qualified fiduciaries also to administer these estates, because, as we know, the way that we pay fiduciaries is based on the amount of the estate and also on the amount of their income for that year.

All of us have difficult cases, and we might even refer to them as nuisance cases, and we are going to have to have someone—in fact, fortunately, we have a lot of professional guardians that have been very successful, but it is unfortunate that some of our veterans wear out their welcome not only in their community but in the city or the county. We have problems sometimes identifying qualified guardians, and I think this is going to be another problem.

Mr. APPLEGATE. Mr. Nerpouni, you had mentioned talking about equity. How do you believe that an incompetent veteran would be hurt if the size of his or her estate is limited?

Mr. NERPOUNI. I am not certain whether or not the individual would be hurt. With regard to equity, I am looking at it in a broader sense in terms of the equity of what we give to our veterans without regard to the issue of competency or incompetency. I believe there is already one statute on the books, which is a version of the $1,500 rule, which applies for long-term care institutionalization. That is perhaps more palatable to me, but I am not altogether convinced that it is an equitable law either.

However, we administer it to the best of our abilities. I just look at this as being perhaps a second or a third attempt to limit the incompetent veteran based on the fact that the individual has a rating of incompetency. It takes away a little more of his self-esteem. It puts him in the background just a little further behind those competent individuals.

If you are asking me would the person with $100,000 in her estate and we put a dollar cap on it how is that going to hurt them, it perhaps isn't going to hurt them, and I recognize that, but—

Mr. APPLEGATE. You say perhaps it would?

Mr. NERPOUNI. It would not.

Mr. APPLEGATE. It would not.

Mr. NERPOUNI. And I recognize that. I am only asking that we treat our incompetent veterans and give them all the rights and all the privileges that we give to our competent individuals.

Mr. APPLEGATE. Well, I think that is reasonable, and that is what we have been doing. What we are looking at is two questions, the building of an excessive estate, and then somebody who is a distant relative whom they may not know who would inherit that money which has been paid by the taxpayers into the pension funds in the first place where it is distributed to those who have earned it.

Mr. BRYANT. Mr. Chairman, I would like to add something to that answer, if I may. One of my concerns is that in probably the

majority of our cases, the person who is caring for the veteran is not one of the people that the IG has recognized as next of kin. What we are doing is keeping the veteran from allowing this person who has cared for them from inheriting.

Now, another argument is that they should be compensated while they are living. My question is how can you compensate someone for caring for a 100-percent disabled person or veteran 24 hours a day? It is almost impossible monetarily.

I think that by restricting a person's right to have heirs—and that is virtually what we would be doing other than their close kin—I think we are treating this disabled veteran different than we do our other disabled veterans.

One of the basic rights we find in almost all legal documents is the right to have heirs. Two of them, for example, are the marriage certificate and the adoption certificate. One of the things that they spell out specifically is that you will be able to have heirs, and I think we are treating this group of veterans differently. I don't agree with that.

Mr. APPLEGATE. Well, of course, they are already being treated differently, because one is competent and one is not, and one needs a guardian or fiduciary and the other is independent and doesn't and is able to care for themselves, usually at home. So, there is a difference.

Mr. BRYANT. I like to think of that difference as being an assistance to the veteran and not hindering the veteran.

Mr. APPLEGATE. Yes, well, that is what we are here to do. It is to try to get some information and see how you feel about this.

Do you have an estimate of the number of cases involving incompetent veterans with no dependents? Do you have figures as to how many are in your particular regional offices?

Mr. BRYANT. I do not. I didn't calculate that, sir.

Mr. NERPOUNI. I don't have that available to me either, sir.

Mr. ZIEGENHINE. I am sorry, sir, but I don't understand the question. The number of—

Mr. APPLEGATE. The number of cases involving incompetent veterans who have no dependents.

Mr. BRYANT. Out of your 5,300.

Mr. ZIEGENHINE. Out of the 5,300, no. You asked a question earlier about the number that had deceased in the last two years. I do have those figures now.

Of those 132, there would have been 47 that met the criteria of having a close relative, but the next largest group would be 61 that had siblings as their closest relative. It depends on where you make the distinction as a close relative.

Mr. APPLEGATE. Sometimes close ones aren't so close, too.

Okay, let's go over here and ask, how difficult would it be to communicate to the adjudication division the size of any estate exceeding a specific gross figure, say, $25,000 after you receive and accounting?

Mr. ZIEGENHINE. The difficulty in notifying adjudication would not be great, but the problem would be getting an accounting that you could believe was accurate and that hadn't protected the estate in some way. It is my understanding the IG indicated that liquid asset would be the only thing considered.

We cannot direct the fiduciary, in most cases, what to do with the money. Guardians are often attorneys in local areas who know the judges well, and they know if the money is going to be cut off and go back to the Federal Government, the judges are going to cooperate with the attorneys in trying to build up the estate. So, they are going to allow purchases such as real estate that would not be counted.

So,in fact, the savings would not be as great as expected, because you would have more of these types of purchases on behalf of the incompetent veteran which would serve no use to him except to build up the estate but would protect it from our cutting the estate off.

Mr. APPLEGATE. I see. Anybody else have any comments on that?

Mr. BRYANT. Mr. Chairman, the actual mechanics would be very little problem. The only problem we have is right now we are looking at approximately 23 percent of our cases to determine the estate. The fact that they are speaking of combined estate we don't have to worry about composition of the estate, but we are going to have to look at that other 75 percent of the cases that we don't look at. That is what is going to make it difficult.

Mr. APPLEGATE. Okay, I think that is fine with me right now, and if I do have any additional questions, I will submit them to you, and I appreciate that.

Mr. Evans?

Mr. EVANS. Thank you, Mr. Chairman.

What kind of information is contained in an estate summary?

Mr. NERPOUNI. Maybe I will try to take that one first, since I have been dealing with them and looking at them for about the past 12 years.

The estate summary sheet is primarily just a quick reference guide, and that is really all that it was designed for. It is not an in-depth thorough analysis of a particular accounting or the number of years of accounts. All it is is a tool that I can use so that when I have a file in front of me, I can quickly open it and make reference.

It doesn't necessarily give me or tell me any information concerning how the funds were acquired or where they came from on a year-to-year basis or whether there are inherited funds from 15 years ago. All it is is a quick reference guide that provides me with the name and address and telephone numbers of the incompetent, of the fiduciary, with a quick reference point of whether it is a court appointed case or a Federally recognized case, the court that it is in, the docket number, and just very cursorily a total of the size of the estate and how much income came in and how much was expended. However, it doesn't break down on a year-to-year basis. It is just a quick reference.

Mr. EVANS. Does it red flag any potential problems when you look at that income and outgo information?

Mr. NERPOUNI. In some instances, but it takes a lot of training and a lot of years of analyzing it. I can perhaps pick up a file and look at the 4,707 and maybe see, after looking at it, if I have five or six of them which might be 30 years' worth of quick reference information, I might be able to identify if 15 years ago there was a large cash receipt which I might then want to go back 15 years to

find the actual exhibit to determine why more cash came in one year than some other year.

Mr. BRYANT. Mr. Evans, it will tell you if it is real property, if it is cash on hand, or if it is a type of deposits or bonds or whatever.

Mr. EVANS. Can you explain to us how periodic accounting of an estate occurs, how often it occurs, and so forth?

Mr. ZIEGENHINE. This occurs generally on a one-year basis. Most State courts require a one-year accounting. Some States do not require an accounting for two or three years, but those are very few now.

The accounting also will, in some cases, be delayed because we are dealing with, in many cases, individuals who are not CPA's, not attorneys, but persons close to the veteran whom we still require the accounting from but don't have the background to do it. Often, those are delayed as much as maybe up to 15 or 16 month intervals.

Mr. EVANS. That is something just filed with the State court?

Mr. ZIEGENHINE. If it is a guardianship case, it is filed with the court. We receive a copy, and we can decide whether we are going to waive hearing or protest the accounting.

Mr. NERPOUNI. Mr. Evans, I would just like to follow up on that one point with regard to court appointed accountings and how often or the frequency that accountings may come in.

In Massachusetts, it is generally required that you have to file an account annually with the probate court. However, the probate court system in Massachusetts is an adversary court system, and unless something is brought to the attention of the court, often something is done, and often many fiduciaries don't even bother to account to the courts, and the courts themselves do not monitor that activity in Massachusetts.

Therefore, it is incumbent upon the Veterans' Administration in Boston to notice the court when an accounting is delinquent. We spend a lot of time, perhaps more so than other States where they have active court systems that are monitoring and require these things to be done, and we spend an awful lot of time chasing after delinquent accounts in Massachusetts.

Mr. EVANS. Is that true in other States, at least in those represented here today?

Mr. ZIEGENHINE. I think, by an large, the local courts don't have the wherewithal to go into the accountings as we do. Often, and I can't say a majority of the times, but in many cases, the court looks to us. They are very happy to have us do the accountings, because they know we look at them very closely, and they rely on us to decide whether they are appropriate or not in most cases.

Mr. EVANS. All right. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Evans.

Counsel for the minority, Mr. Wilson, has some questions that he would like to ask.

Mr. WILSON. Mr. Bryant, you mentioned it might be difficult to have corporate fiduciaries appointed if these proposals were adopted. Would you please elaborate on that a bit?

Mr. BRYANT. Yes, sir. I don't know if I can say much more than I did, but right now, we find that the banks, especially the—you said corporate, right?

Mr. WILSON. Yes.

Mr. BRYANT. The banks, especially the ones that are solvent, are returning cases to the VA. They are making requests to the courts to withdraw from being guardians.

The reason they are doing that is because all of the cases they have are not profitable cases. Those types of institutions are existing for profit as well as service, but they are finding more instances in which they want us to take back the cases that they are not making a substantial profit on and asking to retain the cases that they do make a large profit on.

That has happened in Florida in three different banks and three different parts of the State.

Mr. WILSON. But when they go to the judge and ask to be withdrawn, what then happens?

Mr. BRYANT. The judge usually does as they wish.

Mr. WILSON. What do you do, then?

Mr. BRYANT. In this particular case, we went back and said okay, if you don't want those cases, give us all your cases, and they agreed to do that. Then, once their counsel found out what they had agreed to, of course, counsel objected and then, of course, we had to go to court, and we lost that case. We took the less profitable cases and they got to keep their profitable cases.

Mr. WILSON. How much do you pay these people?

Mr. BRYANT. Up to 5 percent of the estate plus 5 percent of the annual income.

Mr. WILSON. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Rufus.

Gentlemen, thank you very much for coming before the committee and giving us—

Oh, I am sorry. Yes, we have Arnold Moon, counsel for the majority, who has some questions.

Mr. MOON. I would like you to elaborate on that last answer you gave, 5 percent of the estate as well as the 5 percent of the income in annual fee for the fiduciaries?

Mr. BRYANT. That is correct. Am I right? Correct me if I am wrong.

Mr. ZIEGENHINE. It is 5 percent of the income plus unusual expenses that the court may authorize.

Mr. MOON. But not 5 percent of the corpus of the estate.

Mr. BRYANT. I stand corrected.

Mr. MOON. That would be rather exorbitant in some cases.

I would like a little discussion, please, on the reluctance of certain siblings or members of the family who are caring for the veteran and not charging for it. Wouldn't it be a more equitable solution for the veteran and everyone else to allow those charges during the veteran's lifetime and during the lifetime of that person providing the care? Otherwise, it sounds like he is betting that he is going live longer than the veteran and inherit that money.

Well, that is not the purpose of this examination of the program. We want to make sure that all of the veterans are cared for adequately.

Maybe the fiduciaries today are not spending enough money. Maybe the veteran needs a color television set and that sort of

thing, but I believe that the members of the committee are going to be forced to take a good hard look at this.

I would like to go over one other aspect. You mentioned that there is a possibility that a guardian may seek to put his money into real estate which would remove it from a liquid asset. How much say-so does the VA have today in approving that type of investment? What type of investments do you approve today?

Mr. ZIEGENHINE. Sir, we would generally not approve real estate except if it was a home for the veteran to live in, because it really is not going to benefit the veteran to have real estate lying dormant some place.

We would go to the court in most of these cases and tell the court that we do not think it a prudent investment. But the court, in most cases, would have the final say in deciding whether to allow the investment.

Mr. MOON. Yes, the courts would have the final say-so, but they give a lot of credence to your recommendations.

How about other types of investments, the stock market, and so forth?

Mr. BRYANT. I would like to comment on that, if I may. That is one reason I said that we are going to—this is not going to be good for our relationship with those State courts. I think that once the State courts find that the VA or the government is going to recoup those funds, I believe the States may be more liberal than they have been in the past and less cooperative than they are today.

Mr. NERPOUNI. Can I just further that a little bit? In Massachusetts, there is not statutory requirement that the fiduciary petition to purchase real estate in advance, so we are going to find that out in Massachusetts after the fact, and it could be 12 months or 24 months down the road before we know that he has converted the liquid assets into real estate.

We will then have a very difficult time, I suspect, going into court and trying to get that put back.

Mr. MOON. Well, while the committee is looking at this issue, there are no rules written yet. Even though the IG may have recommended that you only look at liquid assets, there is no reason why the committee and the Congress couldn't look at assets other then the veteran's home if they are real property.

Mr. BRYANT. Mr. Moon?

Mr. MOON. Yes, sir?

Mr. BRYANT. Something you mentioned a while ago about paying relatives. You notice that in my statistics, we had almost 3,000 of our 5,280 cases were legal custodians. Recently, we did have authority to pay up to 4 percent to a relative if we could find no one else, but the reason we use this type of guardian or custodian is because there is no fee and all the veteran's fund does go to the veteran.

It has been our policy in the past to try to not pay someone to handle the veteran's affairs unless it was absolutely necessary. Even with this authority we have now, we have to have a very extreme case before we would authorize that, so we would have to have some policy changes.

Mr. MOON. One other quick question. It was indicated earlier that some guardians may be reluctant to furnish asset information

to you. Have you had any experience in that respect, and do you need any statutory language to strengthen your right to ask for asset information?

Mr. ZIEGENHINE. We go to the court now, and the court can put leverage on the individual, but if we go to a system where we are going to have to account for all of these people, not just the court-appointed fiduciary but the legal custodian and so forth, we are going to have to have something there to allow us to demand that they give us accurate and correct and timely information.

Mr. MOON. Okay, I have taken up enough time, but we wanted to get on the record some of the background if we do take a good hard look at this proposal.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you. I appreciate that.

You said, I think, Mr. Bryant, that the State courts wouldn't look too kindly upon the Veterans' Administration recouping monies, as I understood.

Mr. BRYANT. That is correct, but that is my opinion, of course.

Mr. APPLEGATE. With the suggestions that have been made, there is no recoupment. Nobody is trying to—

Mr. BRYANT. Any estate that is left could not go to a close relative would come back to the Federal Government and go to the Treasury. That is my understanding of the recommendation.

Mr. APPLEGATE. I think the recommendation is just to place limits on it. It doesn't have anything to do with what has already been accumulated. There would be a limit. If it is $25,000 or $50,000 or whatever it might be, that would be the limit of it, and anything up to that point would go to any heirs wherever they might be, but it would be capped off. So, there would be no recoupment. That is my understanding.

Mr. BRYANT. That was not my understanding of the recommendation.

Mr. ZIEGENHINE. Mr. Chairman, the point there was not that there would be a recoupment. I think that would be very difficult to try to do once the money has been paid out.

The point was that an astute fiduciary, knowing that the income was going to stop soon once it reached a certain point, as the income came to that point would go out and purchase real estate to lower the liquid assets.

Mr. APPLEGATE. Well, that is possible, too.

Our other counsel has some questions.

Mr. BRIZZI. Mr. Ziegenhine, I would just like to ask you, what makes you think that the Congress would not exclude real property, other than the veteran's residence, from consideration as part of the veteran's estate?

Mr. ZIEGENHINE. It was my understanding that—

Mr. BRIZZI. It would make no difference whether it was personal property or real property if it were not the veteran's home. So, I am just questioning what you are saying to us.

Mr. ZIEGENHINE. It was my understanding that the IG's report suggested liquid assets only be considered and that real property such as real estate would not be considered. You would also put us in the position of having to decide whether the value of this property is what is reported. We would have to determine whether the

estate was accurate. You would possibly put us in the real estate business.

Mr. BRIZZI. How do you now determine the value of a hospitalized veteran's estate?

Mr. ZIEGENHINE. It is not as difficult, because we are only talking about $1,500. There is almost always that much liquid asset available. It usually isn't an issue. It very, very seldom is an issue.

Mr. BRYANT. The home is excluded from that calculation also.

Mr. BRIZZI. Did not the Inspector General indicate that the average size of an estate is approximately $70,000?

Mr. ZIEGENHINE. That was my comment, sir.

Mr. BRIZZI. Is there some reason to not believe that a very large percentage of that consists of liquid assets?

Mr. ZIEGENHINE. In most cases now, it is. It probably would not be if the rules were changed.

Mr. BRIZZI. I think you are making an assumption that may not be true, but I understand your reasons.

Mr. ZIEGENHINE. This is possible.

Mr. BRIZZI. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Brizzi.

Thank you, gentlemen, very much for your input. We appreciate that very much.

Let us have the next panel come forward, Mr. Lem, Mr. Jones, and Mr. MacMillan.

Gentlemen, we thank you for coming before the committee. In case anybody doesn't know, these are district counsels, and we would like you to identify yourselves and give us a little bit of your background, please.

Mr. LEM. My name is Howard Lem, and I am the District Counsel in Washington, D.C. I worked for the General Counsel from 1979 to 1983. I have been the District Counsel in Washington, D.C. since 1984.

The only thing about Washington which is a little unusual is we have jurisdiction over parts of Maryland, Virginia, the District of Columbia, West Virginia, and all foreign cases except for veterans who live in the Philippines and in Mexico.

Mr. JONES. My name is Richard J. Jones. I came with the Veterans' Administration in 1969 as a field attorney in the fiduciary program. I functioned in that capacity for a year. I spent two years as an attorney advisory in the fiduciary program and then became supervisor of the field legal section and was actually transferred to the Veterans' Service Division and functioned in that capacity for four years before returning to the District Counsel's office.

I was appointed District Counsel in 1978 and continue to serve in that capacity in Waco with responsibility for the approximately northern 164 counties in Texas.

Mr. MACMILLAN. Mr. Chairman, my name is John M. MacMillan. I am District Counsel for the Veterans' Administration in Detroit, Michigan. I began my career with the Veterans' Administration in 1961 as a field examiner. I subsequently worked as a legal and guardianship attorney in the office of the Chief Attorney. I now supervise the attorneys assigned to my office and have extensive experience in the guardianship program.

Mr. LEM. Mr. Chairman, we have no prepared opening statement. We would be happy to answer any questions that you have for us.

Mr. APPLEGATE. If you have anything that you would like to start out with and say, I would appreciate hearing from you based upon what you have already heard from the IG and from the veterans officers from the various regions.

STATEMENT OF JOHN M. MACMILLAN, DISTRICT COUNSEL, DETROIT, MICHIGAN VA REGIONAL OFFICE

Mr. MACMILLAN. Well, we certainly appreciate that the committee has a difficult problem facing it in making these decisions as to whether or not caps are to be put on these funds and how we are to go about supervising the estates that are paid to fiduciaries.

It is a very complex area, and it certainly presents us with many difficulties at the field level that we have dealt with over the years with regard to the accountings required of court appointed fiduciaries, with monies paid to Federal fiduciaries who are not bonded, with determining the actual value of the veteran's estate when real estate is involved to determine what the real estate is actually worth in terms of being available for sale, the investments that are appropriate under State law and so on.

However, we do feel, at least in my experience, that there is a significant amount of money available that is being paid to so-called remote heirs in many cases, and we have been successful in recovering significant sums of money under the existing provisions of law, sections 5220 and 3202(e), and we feel that we should use the available provisions of law to the maximum extent regardless of whether any additional legislation is placed on the books to make sure that we do interdict those estates which should, under 5220, revert to the United States.

In my own experience, once we are given the tools to approach this problem at the local standpoint, legally, we do not experience that much difficulty in recovering the funds from the estates in the probate court system.

So, for example, in the City of Detroit or the State of Michigan, we have a corporate fiduciary that presently has 565 guardianships. At the last analysis made by the trust officer, there remains about $750,000 in accumulated funds in 18 estates where we have determined that there are no heirs.

So, there are significant amounts of money available to be recovered if the legal tools are made available to us.

Mr. APPLEGATE. Thank you.

Does anybody else have anything they would like to say?

STATEMENT OF RICHARD J. JONES, DISTRICT COUNSEL, WACO, TEXAS VA REGIONAL OFFICE

Mr. JONES. Mr. Chairman, just as a matter of clarification, I have a couple of remarks.

The district counsels are only involved in court appointed guardians. The fiduciary program as a whole is the responsibility of the gentlemen in the preceding panel, so we can respond only to those court appointed cases, because that is where our responsibility lies.

One thing that this change brought about in the reorganization within the agency was there had been a Chief Attorney's office who had run the fiduciary program, and this was taken into the SD, and then the attorneys in the field were taken out of the program except where there were court appointed guardians.

These gentlemen still have the responsibility of selecting a fiduciary if they decide a court appointed fiduciary best serves a veteran. Then they come to us for our assistance.

So, our remarks have to be addressed to court appointed guardians only which is a minority of the fiduciaries now.

This has changed some of the makeup of this particular problem of inheritance by collateral heirs, because the estates do not accumulate in the legal custodian estates or in the institutional awards or YFE like they normally would do in a court appointed guardian.

Another thing that occurred that has had an effect on the accumulation of estates has been in the amendment to the statute that permits the VSO to pay around an existing guardian. Before the amendment of that statute and recognizing a fiduciary if he went out and there was already one appointed, then you paid that guardian. The amendment of the statute lets him go ahead and appoint a legal custodian or an institutional award or some other Federal fiduciary as opposed to the guardian.

This has made a difference, certainly, in the number of guardianship estates. I noticed in Waco, for example, from December of 1986 until February of 1988, the number of beneficiaries under some type of fiduciary arrangement increased from 5,054 to 5,365. Yet, the number of guardianships during that same period decreased from 848 to 803.

So, as far as our involvement is concerned, I am sure in most offices it is becoming less where you are having less court appointed fiduciaries.

I did take the time to review and had my office review and kind of maintain a listing on these. On the automated system of the VSO for January 29, they showed 828 pending guardianships. A review of those principal guardianship folders in our office indicated that 373 did not have parent, children, or spouse to inherit their estates which was about 45 percent of the cases of pending guardians with a value of $32.685 million.

Of these 373, 119 or 32 percent had estates in excess of $100,000.

STATEMENT OF HOWARD C. LEM, DISTRICT COUNSEL, WASHINGTON, D.C. VA REGIONAL OFFICE

Mr. LEM. A check as of yesterday showed that Washington had 1,273 active PGF's domestically and 110 estates of incompetent veterans they are watching overseas.

It appears to me after reading the IG's report, it is concerned about two things: One is a cap on the amount of money collected by fiduciaries. The second deals with the issue of remote heirs.

Regarding the first issue, here in Washington at least, from what I can gather, the use by the VSO of restricted funding, putting amounts in bank accounts where, before the amounts can be expended, they need the signatures of not only the fiduciary but the VSO, has helped a great deal in resolving the issue of abuse.

cond thing is bonding. Certainly, court appointed fiducia- bonded. We are now requiring Federal fiduciaries to get as well, and that has also cut down on the abuse.
y didn't see any problem in putting a cap on the amount of isbursed to fiduciaries. It sounded like a good idea.
d say, though, that the number of cases with large estates ating is less than I would imagine and than I think the IG e reported. I am not sure, but my understanding is that oney is disbursed, let's say a veteran is receiving $1,200 VA and $800 from Social Security and his cost of living is hey use that money first, the $1,200 from the VA as op- applying the total sum.
nen you figure out an estate after someone has passed e amount left over which is directly attributable to the VA s than one would imagine if you look at the total estate. ling the issue of remote heirs, looking at several of the my office over the last few years where money has been by remote heirs, we had one case involving an estate of which was given to six nephews in Lithuania in Russia. We her estate of $52,000 which was inherited by 17 nieces and in Italy.
e other hand, we had a case involving a veteran who had e of over $100,000 who was hospitalized since 1917. His only e in the claims folder to an heir was a letter from a daugh- 1934. This man died in 1981.
on that letter and some checking, she apparently was in daughter of this man, living in Russia, had only seen the once in her lifetime right after she was born, and she in-

s the point here is that it is not always the relationship of member that designates whether or not someone takes veteran or not. I think that was well pointed out by the n from Florida.
ly concern, and I raise it with you, is if there is a legisla- nge, I wonder what happens when a competent veteran will designating his nephew or his niece or his brother he subsequently becomes incompetent. Is that will going alidated by this legislation? I would hope not.
PPLEGATE. Thank you, Mr. Lem.
have too many questions. I think you may have answered but what is the largest estate that any of you can recall, t is the most remote inheritance that you can recall in eriences?
ACMILLAN. Mr. Chairman, I have a series of cases in front me of them involving 3202(e) matters and some 5220. The is that of Andrew Carvana and is $250,000.
cond case of Frank Osuch is $108,000. Wah Sik Ong is a 200,000. Wayne Lampman is a case of $90,000 in the hands duciary. Joseph Mescal's estate is $85,000, and a recent we have discovered in which we believe there has been aling by a State licensed sponsor who was caring for the s about $200,000.
estates are significant. There is no question that there is ant amount of money involved in these cases, and we are

concerned that, in some cases, the so-called heir cannot really be proven.

So, I think we need the authority to make sure that when the allegation is made that blood kin survives the veteran that we are able to make an inquiry to determine what the proofs are. Of course, we do have the authority to file an appearance in the probate court and to take part in the legal proceedings to determine heirs, and I think we need to continue to be aware of the fact that there is often a very short shrift given to these determinations, and we need to make sure that significant amounts of money that belong to the Veterans' Administration are not allowed to go to persons who do not deserve it.

Mr. APPLEGATE. I appreciate that, and we would like you to submit that for our record.

Mr. MACMILLAN. I would be happy to, Mr. Chairman.

[The information appears on p. 81.]

Mr. APPLEGATE. Mr. Jones?

Mr. JONES. I believe that the most remote heir that I have observed inheriting an estate was an eighth cousin, and I have frankly not had the experiences that Mr. Lem has had as far as foreign heirs. In fact, it is only within the last two years that I have had one inherited by nieces and nephews in Mexico, a small estate of $37,000.

These present estates range—the ones that I referred to a while ago—these 373 ranged from $5,000 to $534,000 in size.

Mr. APPLEGATE. From $5,000 to $534,000?

Mr. JONES. Yes.

Mr. LEM. The most remote heirs that I have are nieces and nephews in Italy. The problem that we have in foreign countries is that there are no accounting procedures overseas that are required, and it makes it very difficult to ascertain sizes of estates. We have to depend on embassy personnel to go out and do field examinations for us, but there is no basis like we do in the United States having accounting procedures.

Mr. APPLEGATE. Of course, you have parts of West Virginia, Virginia, Maryland, and the District of Columbia and then you say all foreign cases?

Mr. LEM. Our Washington Regional Office has jurisdiction over all foreign incompetents except for those who live in the Philippines and in Mexico. Currently, there are 110 incompetent beneficiaries overseas served by the WRO. Of those, only 6 are veterans. The rest are helpless widows of veterans.

Mr. APPLEGATE. Do you have any experience as far as misuse of funds by fiduciaries?

Mr. LEM. We only have one case that is currently under investigation where we believe an attorney may have overcharged the estate, and we are undergoing that review right now, but that is the only case I am aware of.

Mr. APPLEGATE. Just one and it is an overcharge.

Mr. LEM. We believe it is an overstatement. When we get the accounting and look at it, it looks like it is over.

Mr. MACMILLAN. We have experienced an unfortunate circumstance in Michigan recently where a member of the bar has embezzled $150,000 from one of our estates, and he has subsequently been

disbarred, and we have been able to return a good portion of the funds to the estate based on the bond that was furnished by the attorney guardian.

We are much concerned with self-dealing and overcharging in terms of fees and improper investments in these estates. So, we feel that our presence is really needed in the probate courts, and I think the judges in our State agree with us. They take our recommendations seriously. They know that our field examiners conduct investigations into these problems.

So, we are satisfied that the State courts appreciate the oversight efforts that the Veterans' Administration and the Veterans Services Officers conduct in these estates. We feel that if we were not present, there would be more defalcations from these estates.

Mr. JONES. I do not believe that the control or regulating of investment by a court appointed fiduciary is a problem. I think that the courts with the codes of the individual States let you exercise enough control over that that you can prevent—first of all, in Texas, you can't invest in common stocks. You can't invest in real estate except for a home, and any expenditure out of that guardianship requires the waiver of the Veterans' Administration and the accounting requires the waiver of the Veterans' Administration or the court appearance if they choose.

I really don't, regardless of the type of assets that you would count in your total, I don't see a problem in the control as far as the court appointed fiduciary. I do as far as the Federal fiduciary. I think the VSO would have a much more difficult time than we would as far as the court.

Mr. MACMILLAN. Under the terms of the Uniform Veterans Guardianship Act which we have in Michigan, investment in real estate is not permitted other than as a residence for the veteran. Investments are required to be in government-backed securities so that there is a safeguard as far as investments are concerned.

So, we do not believe that the investment in real estate would constitute a serious drawback to solving this problem.

Mr. APPLEGATE. So, what you are saying is it is not a big problem then. I thank you very much.

Counsel for the majority has a question.

Mr. BRIZZI. Gentlemen, the prior group mentioned that they believed, or at least some individuals believed, that the relations with the State courts would suffer if a limitation were placed on the size of the estates of these incompetent veterans. Do you have any reaction to that? Do you share that view?

Mr. MACMILLAN. I must say that I really do not understand the basis for that approach, but my personal opinion is that that would not take place.

Mr. JONES. I thought the comment was interesting, and I do not concur. We have a problem now that is permitted under the statute that creates a much more difficult problem for us, and that is the ability of the VSO to recognize a fiduciary when there is an existing guardian which, theoretically, you could have a brother who is a guardian and then the VSO could come along and recognize him as a legal custodian.

The courts expect him to account for those benefits to the court. Yet, the VAS is not requiring him to account to the court. That is

much more detrimental and already in existence than what this would contemplate.

I don't think the limitation would create any problems.

Mr. LEM. I don't perceive the problem, although I do see litigation looming on the horizon for these remote heirs.

Mr. BRIZZI. Let me just follow up on that. What sort of litigation would you see?

Mr. LEM. Well, if it were an estate of $300,000 and I were a nephew taking care of a veteran for quite a while and then someone came along and passed a statute saying I was not entitled to take, that is what I meant.

Mr. BRIZZI. I just wanted to clarify that there would really be no change to inheritability under the IG's proposal. It is simply that when an estate of a veteran reached a certain level, the benefits would simply not be added to the estate.

In other words, the distance relatives would still continue to inherit. I am not quite sure that there would be much in the way of litigation except for somebody saying well, wait a minute, this estate ought to be bigger than it is.

Mr. MACMILLAN. Well, I must say that we have always experienced difficulty under Public Law 146 of determining exactly what constitutes the estate's assets and what the size of the estate is. So, we agree with the people in DVB that if you put this cap on and require them to adjust the size of the estate continually, there may be a significant additional burden on DVB in order to keep track of those in's and out's.

From my own standpoint, the money seems to me to be more appropriately lodged in the hands of a guardian who invests it prudently and let the estate grow, and if the restricted class of heirs is available, the spouse, the children, dependent parents, and so on, they should legitimately take the estate regardless of the size.

So, if the funds are put in FDIB, they are left unproductive, and, again, my personal opinion—

Mr. BRIZZI. Just to clarify on that point, in the particular cases that you just mentioned, there would be no cap where there are dependents involved.

Mr. MACMILLAN. Fine, yes. Under those conditions, then, I would have no objection.

Mr. BRIZZI. Thank you, Mr. Chairman.

Mr. APPLEGATE. Gentlemen, thank you very much for coming to the committee today. I know you traveled a good distance, and we appreciate your appearance.

And if you will submit that for the record, I would appreciate it.

Next, we will have Mr. John Vogel who is the Chief Benefits Director of the Veterans' Administration. He will be accompanied by Mr. Jack Thompson who is the Assistant General Counsel.

Mr. VOGEL. Good morning, Mr. Chairman.

Mr. APPLEGATE. Thank you, John. Welcome to the committee again.

Mr. VOGEL. Thank you, Mr. Chairman.

To my left, Mr. Chairman, I would like to introduce to the committee Dave Brigham who is the Director of the Veterans Assistance Service. That service is responsible for many aspects of serv-

ice to veterans, including the fiduciary and field examination program.

STATEMENT OF R. J. VOGEL, CHIEF BENEFITS DIRECTOR, VETERANS' ADMINISTRATION; ACCOMPANIED BY: JACK THOMPSON, ASSISTANT GENERAL COUNSEL; AND DAVID BRIGHAM, DIRECTOR, VETERANS ASSISTANCE SERVICE

Mr. VOGEL. Mr. Chairman, I appreciate the opportunity to address the subcommittee on the issue that involves thousands of incompetent beneficiaries and the payment of benefits to those beneficiaries that exceed $1 billion per year. I will focus my remarks, if I may, on the recommendations contained in the Inspector General's report.

The IG recommends that DVB propose legislation that would prevent remote heirs from inheriting surplus estates derived from VA benefits. More specifically, the IG suggests a cap on the estates with benefits either withheld or placed in a trust.

I would like to point out that the issue the IG raises concerning the accumulation and distribution of an incompetent veteran's estate is not a new one. It has been considered off and on by the Congress and by the VA and its forerunners for almost 65 years.

The Department of Veterans Benefits disagrees with this recommendation for several reasons. First, the phrase, "the intent of Congress," has been used by the GAO, the VA's Inspector General, and others in their discussion of remote heirs but without any real analysis of the historical intent. We believe that the often-stated intent of Congress, i.e., to prevent accumulation of VA estates from going to remote heirs, has been used out of context.

The Department of Veterans Benefits believes that the Congress historically has intended that the universe of veterans subject to limitations on accumulated estates be only that group of incompetent beneficiaries who are institutionalized at government expense. It is the institutionalization that is the key element and provides a rational basis for what would otherwise, in our view, be discriminatory legislation.

A number of pieces of legislation aimed at the accumulated Federal assets of incompetent veterans has been considered over the years. Some were successfully enacted into law; others were not.

Public Law 68-242, enacted in 1924, provided the first reduction in the amount of benefits payments while hospitalized. Public Law 71-522, enacted in 1930, created the first estate limitation of $3,000 for hospitalized incompetent veterans. Public Law 73-2, enacted in 1933, replaced the $3,000 estate limitation with a range of $1,500 as an upper limit and $500 as a lower limit. This provision is now commonly referred to as the $1,500 rule.

Public Law 86-146, enacted in 1959, extended the $1,500 estate limitation to veterans receiving institutional treatment at all levels of government, whether it be Federal, State, or local. It also contained a provision to limit, upon the death of the veteran, the distribution of funds maintained in the PFOP, personal funds of patients account, held at the institution.

The common denominator through this historical legislative process was that the enacted provisions applied only to institution-

alized incompetent veterans who were receiving care at government expense.

Public Law 86–146 is a good case in point. It was a re-draft of prior legislative initiatives that contained recapture and cap provisions that were specifically rejected by the mark-up committees in its final form. This law, likewise, applied only to institutionalized incompetent veterans.

It seems clear from our research that the historical intent of Congress was to limit the estate accumulation and distribution only under conditions where an incompetent veteran was receiving the benefit of institutionalized care at public expense.

Another question to consider in this discussion is the composition of the estates that are being inherited by remote heirs. The same issue developed during the GAO study of 1982 on the same subject. At that time, the VA did not dispute the size of the average estate, but we did question the composition of the estates.

Except for cases where VA benefits are the sole source of income and the estate is fully derived from VA benefits, the IG's proposal is indiscriminate and could affect non-VA estates as well. We do not believe that the Federal Government has any business involving itself with the potential distribution of non-Federal assets. That is the prerogative of the States.

The Congress historically has taken great pains to remove itself from involvement with probate matters, matters that are the sole responsibility of the States. This is a States rights issue.

The recommendation will create a burden on resources. Fiduciaries would be more likely to invest the veteran's assets in real property or spend money in ways that would require the VA to formally object. Objections from the VA would involve additional expenditures of resources from DVB and the General Counsel, because many of these estates are held by court appointed fiduciaries.

We have no way of calculating this expected cost.

Leaving a residual estate in the hands of a fiduciary to manage would not reduce the agency's obligation to supervise the management of that estate. We would incur the same costs, at minimum, and uncalculated costs, at the maximum. We also can envision an increase in accounts receivable activities as over-payments are created.

Our ability to find and appoint qualified fiduciaries for some of our most difficult cases would be significantly reduced. We have about 11,000 veterans under corporate court fiduciaries. Many of the banks performing this responsibility do so only to increase their cash flow or to make a little gain based on the commissions received on the veteran's income.

We believe that many of the larger, more solvent banks would ask to be discharged by the courts. Many are willing to put up with what they consider to be nuisance cases but only for adequate compensation.

We also have no way of knowing what the potential impact would be on the financial industry if government were to remove hundreds of millions of dollars from circulation over the next few years.

The IG sates that the proposal would reduce Federal outlays. That may or may not be true. Funds must, generally, still be obli-

gated in order to be paid into a trust or just placed under a withholding where, for probate or State purposes, the money does not exist.

Suspension of payments to a fiduciary creates the appearance of denying veterans their benefits whether or not the suspension is triggered by a cap or whether the suspension results in withheld funds or a trust fund administered by the Treasury. The recommendation would have us, in effect, issuing IOU's to veterans whose service to this country contributed, in some manner, to the condition for which they would receive inequitable treatment.

Any proposal to suspend or divert VA benefits based on the size of the estate or actual monthly consumption significantly changes the way compensation benefits are viewed. The legislation would debase compensation and change it into a needs-based benefit little different from pension.

There is no equity as to the distribution of the assets under any proposal to alter the accumulation of VA estates. The fact that a son or daughter may inherit the estate does not speak to the fact that it may have been the veteran's brother, sister, or some other relative who provided the love, care, and attention needed over the years.

As we have indicated, both the issues of limiting distribution of estates and placing a cap on the estates of incompetent veterans or incompetent beneficiaries has been debated in various forms over a long period of time. These are the types of issues which appear to have rather simple solutions at first glance.

As they are analyzed in more detail, however, they are filled with complexities that also speak to the larger issue of program and benefits delivery integrity. These are not easy issues. If we could ask the Congress one thing, it is that you approach these issues with great caution.

We are certainly aware of the need to control budget outlays and are more than willing to work with the committee to explore savings options. In this particular area, however, we ask you to consider closely all program implications and all related legal issues.

We also ask that you continue your long-standing awareness of our special obligation to protect the interests of incompetent beneficiaries who may have difficulty protecting their own interests.

Mr. Chairman, that concludes my prepared remarks. I would be happy to answer any questions that you or members of the committee may have.

[The prepared statement of Mr. Vogel appears on p. 84.]

Mr. APPLEGATE. Thank you very much, John.

There are just a couple of questions I would like to ask, and perhaps counsel then might want to ask something.

How many employees are involved in the administration of the fiduciary program?

Mr. BRIGHAM. We have at the present time 249 field examiners assigned to our regional offices and to outlying locations and 116 estates analysts assigned to the regional office system.

Mr. APPLEGATE. The IG stated that the proposal could be implemented without a significant increase in the DVB workload through the periodic accounting that is already required. What is

the basis for your statement? You state that the proposal would create an unusual burden on the Veterans' Administration.

Mr. VOGEL. Mr. Chairman, I am rather amused from time to time that people outside the Department say how easily we can do things. I think we are pretty competent managers, but the assessment of our capacity from people outside amuses me.

If it were merely 10,000 or so award action adjustments done in the adjudication divisions of our regional offices, I would agree with the Inspector General. That, measured up against 3.5 million adjudiccative determinations in that same process, would be small indeed.

What really would be cumbersome and difficult to administer would be the accounting systems that would have to be placed in effect to be able to deal with the VA derived assets separate and apart from non-VA derived assets, dealing with the courts and having them understand that we would now have a separate accounting system in place, if you will, to monitor these estates throughout—I don't have an FTE figure to say how much that would take, but I think it would be markedly more than it is now.

In addition, of course, we would have to do a significant amount of computer programming. Our systems are highly automated or assisted with automation, and it would take some expenditure there as well to provide the automated backup to that system.

Mr. APPLEGATE. You consider the IG, then, an outsider who doesn't have enough—

Mr. VOGEL. Well, 10,000 award actions is not the whole of what we would have to do. That is really simplistic in its outlook.

Mr. Brigham may have something to add to that, Mr. Chairman.

Mr. BRIGHAM. I think I would add to the Chief Benefits Director's answer that, obviously, in some fashion, this all is contingent on how a legislative proposal might be framed. If, in fact, we ultimately should deal with a narrow group of veterans or whether we deal with all incompetent wards and also whether a legislative draft might include the specification of VA assets versus all personal assets in an estate would make a difference.

In either event, it can make the administration of such a law either more difficult or easier, as the case may be. In a very basic sense, we perform accountings at the present time only on those court appointed cases and on a small number of the so-called Federal fiduciary cases, approximately 5,000 of those.

So, the accounting burden would logically increase radically if ultimate legislation encompassed all beneficiaries. If it encompassed only veteran beneficiaries, it would more than double.

I would be hesitant without specific legislation in front of us to consider at present to estimate exact manpower needs, but we know that estate administration along the lines of that which I have just mentioned could easily consume an addition 120 to 200 FTE's for administration purposes, part of which is associated with the fact that we are not simply talking about periodic accountings but, rather, actually an estate monitoring process for a number of cases that are at a ceiling or close to a ceiling or at a floor minimum or close to a floor minimum.

Mr. APPLEGATE. John, you had talked about administrative costs, and you have a parallel program for hospitalized incompetent vet-

erans with no dependents. How much does it cost to administer that program?

Mr. VOGEL. We do not keep statistics on the cost of individual operations. Under ideal conditions, there is no additional cost to administer that program. When the estate hits a $1,500 maximum the award is suspended and when it hits $500 the award is resumed. These are simple transactions accomplished in the Adjudication Division. They are rather straightforward and the FTEE are available to process the normal transactions.

These people are, as I pointed out, maintained at government expense. Hence, the limitation that is in the law.

Mr. APPLEGATE. So, that doesn't incur any particular cost to administer?

Mr. VOGEL. We just do the award adjustments in the adjudication divisions upon the accumulation of compensation to $1,500. We have that working well and is handled in a rather routine way in our regional offices.

[Subsequently, the Veterans Admnistration furnished the following additional information:]

While there is no additional cost under ideal conditions, more often than not, however, we do experience situations that generate additional costs to administer the $1,500 estate limitation. These costs quite frequently are encountered when the information that triggers the award action is delayed. The delay may be as long as many months. When this occurs, overpayments are created, setting into motion a number of administrative processes beyond the normal adjudicative processes, including accounts receivable, debt collection, and fiducicary activities. If the fiduciary is uncooperative in returning the overpayment, then we must involve a District Counsel by taking the fiduciary to court to collect from the estate.

Mr. APPLEGATE. Let me ask you this, John. How would the IG's proposal hurt any of these incompetent veterans? Given a choice of recommending to Congress legislation which penalizes or taxes veterans or one which limits amounts inherited by remote heirs of incompetent veterans, which of the proposals do you think Congress ought to be considering, if any?

Mr. VOGEL. I don't think there would be a harm felt to the individual veteran with properly drafted legislation and administration of that program. I see it more as an equity issue, an incompetent beneficiary being treated in a manner different from a competent one.

The gentleman from Boston spoke of a severely service-connected disabled veteran receiving VA institutionalized care and happens to be competent. The estate accumulates there as well. Is it the intent that we build estates up and, in that case, it might be inherited by the same seven nieces and nephews in Italy we heard about a little bit ago.

I see it more as an equity issue than anything else. Once the check is delivered to the veteran's fiduciary and placed in an account for his or her use, the government ownership of that changes. While it is publicly derived, it is no longer publicly owned. I see that as striking at the heart of the issue.

Mr. APPLEGATE. Well, let me ask Mr. Thompson this question since he is the Assistant General Counsel. Do you have or does the General Counsel have any objections to the IG proposal.

Mr. THOMPSON. We do not. Essentially, the only question raised by it in our minds at all was one of whether singling out only in-

competent veterans for this estate cap would somehow violate the constitutional guarantees of equal protection under the laws.

There are a couple of pretty good precedents in the analogous situation of the $1,500 estate cap that would lead us to predict that a Federal court reviewing the constitutionality of the IG proposal would conclude that there would be no violation of equal protection, that Congress could justify this on the same basis that they justified the $1,500 estate cap. A rational basis would be all that would be required to support the provision.

Mr. APPLEGATE. So, even though there might be the suggestion, you don't believe there would be any constitutional question.

Mr. THOMPSON. No. I certainly wouldn't be surprised if it is challenged, and a court would ultimately have to decide the issue, but based on what precedent exists—in fact, one of the Federal cases was appealed to the Supreme Court as recently as 1976, and it affirmed the $1,500 estate limitation—we feel pretty confident that it is constitutionally defensible.

Mr. APPLEGATE. Mr. Thompson, too, if you could, Mr. MacMillan had submitted for the record some figures which you heard while you were sitting there. I was wondering if you could possibly poll each of the district counsel offices and provide similar information to us.

Mr. THOMPSON. We would be happy to give that a try, Mr. Chairman.

Mr. APPLEGATE. All right. You will give that a try. That is fine.

Mr. Moon?

Mr. MOON. I have just a couple of comments, John and Dave. The IG made some recommendations which, technically, are options for the committee to pursue. You haven't had the benefit of any legislative proposals which we may have been considering here.

However, for the purpose of discussion—first off, another statement.

The IG did not propose that we track the source of the funds going into the estate. His proposal had nothing to do with trying to recapture from money already into an estate. So, for the purpose of this discussion, we are not trying to recapture any funds already in an estate.

The idea is, is there some reasonable way to limit the further accumulation of large estates? So, we may be developing legislation and having you comment on it later on, but we would like you to keep an open mind on it, try to keep it clean and easily administered. As far as the additional staff needed, if there were no need to try to pinpoint the source of the money going into the estate for this purpose, and if we were able to utilize the annual accountings as the trigger for action under this law, it would seem to maybe minimize the administrative burden on the agency.

So, what we would like you to do is keep an open mind on that. Hopefully, we will be developing legislation later this year, and I just wanted to set clear what direction we may be heading—as we may be talking to you—so that you can give us some additional input on this that would make it more workable, but we will be definitely considering something this year.

Thank you, Mr. Applegate.

Mr. APPLEGATE. Mr. Wilson?

Mr. WILSON. John, on page 8 of your written statement, you speak to a formula which leads you to a conclusion that $2.4 million is involved as compared to the IG's estimate of $156 million. Would you please clarify that?

Mr. VOGEL. I am going to ask Mr. Brigham to take a shot at that, Mr. Wilson.

Mr. BRIGHAM. You test my old math, Mr. Wilson. In essence, what that is most specifically relating to is not so much a refutation of the IG's proposal or suggestion that $156 million could be saved. If you look at the Inspector General's report and the reference to $156 million in terms of savings, the potential is to a radical reduction in outlays associated with the payment of compensation and pension benefits.

Our position, at least in part, is that one of the complicating factors, one of the complexities of this entire issue is whether or not legislation can appropriately simply terminate benefits to incompetent beneficiaries based on estate limitation. In effect, if we were to create some contingent liability arrangement, then, obviously, it requires the information and guidance of the Treasury Department or at least our own comptroller in terms of how that could be structured.

More than that, if we simply handle this in a more traditional benefits delivery way as an estate limitation with the suspension of additional payments, we in effect may create a withholding arrangement against which benefits obligations might have to be set in either event and, thus, no savings in outlays.

That particular formula suggests simply that if we took an extract of those veterans, generally speaking, compensation recipients with high rates, in this case, 100 percent, and considered those that had or probably had estates in excess of $25,000, in fact, what we would potentially prevent in outlays of $156 million or thereabouts would be that 100 percent compensation that was terminated during that particular year.

In fact, what is actually recoverable would be only for those who pass away during that particular year. Using an average mortality, it would be only that amount which would be recoverable against the remaining estates of those veterans.

Mr. WILSON. John, I may say that, very obviously, a figure of $156 million would get anybody's attention, much more so than a comparative figure of $2.6 million.

At one point in your testimony, and again at the bottom of page 8, you make reference to the economy, and you make reference to $140 million or more per year taken away from an industry that appears to be in serious trouble.

Is that really a concern?

Mr. VOGEL. It is more of an observation on the state of some small banks. I think you are depriving some of them from assets that they could in fact lend out and earn money on and may have some deleterious effect. I really couldn't back that up with an economic analysis, Mr. Wilson, but it is an observation made about the time we see FSLIC and others bailing out some major banks, including some significant problems with rural banks in agricultural areas of the country and in the energy belt.

Mr. WILSON. May I assume it is not a real problem as far as you are concerned in terms of the Congress trying to correct the idea of very distant heirs getting money to which they might not be entitled? That is not really a concern of yours, is it, the economic thing?

Mr. VOGEL. No, I don't think the economics issue from the standpoint of capital distribution and bank solvency is really our concern. Part of our interest in presenting that issue, however, is to recognize that we are talking about a substantial amount of potential cash flow removed from the economy.

More than that, informally, we have had discussions with the Federal Deposit Insurance Corporation over a prospect of that occurrence, and they expressed some significant concern. So, that is more their concern than VA's at this point.

Mr. WILSON. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Wilson.

The only other thing I would say is there has been a statement submitted for the record by the PVA which will be entered into the record, without objection, and, without objection, the record will stay open for 10 days for any other organizations that want to submit written testimony on this subject.

[Statement for the record submitted by the PVA appear on p. 96.]

Mr. APPLEGATE. I have just a quick comment here on the PVA. The PVA feels the IG's report is legally, fiscally, and morally sound and that they support the recommendations contained in the audit. They take issue with you, John, on the fact that no savings would accrue to the Department and additional staff would be required.

At the same time, they say with the decline in DVB staffing over the past decade, fiduciary personnel have been hard pressed to meet minimum quality of service standards. Of course, they believe that there would be additional monies, and it would be a reduction of outlays. They urge that the savings be reprogrammed into additional staffing for VA fiduciary personnel.

What can you comment on that?

Mr. VOGEL. The IG also, in discussions I had with Mr. Sato and with Mr. Morani, suggested that some of the "savings" could be diverted and put into resources for the Department of Veterans' Benefits since the savings identified would be far and away greater than the amount we would need for any additional FTE or accounting systems.

I have never seen things work that way in this town. I think you might get it one time. There may be an effort to do that one time, but then it will be like everything else that happens. It is gone forever. I think at the bar of reality, that is a one martini suggestion. I don't think it would hold up for very long. It sounds good, though.

Mr. APPLEGATE. It does.

Well, if nobody has anything else to say, John, I appreciate you and your staff coming before the committee. We always enjoy talking with you. Thank you very much, and it may well be that you will be hearing from the committee later on this subject. We don't guarantee that or anything else, but you may.

Mr. VOGEL. Thank you, Mr. Chairman. We would be pleased to work with the committee as we have to give technical assistance or in any other way. We are at your call, sir.

Mr. APPLEGATE. Good. Thank you very much.

Mr. VOGEL. Thank you.

Mr. APPLEGATE. With that, the subcommittee stands adjourned.

[Whereupon, at 11:12 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

STATEMENT OF
HONORABLE DOUGLAS APPLEGATE, CHAIRMAN
SUBCOMMITTEE ON COMPENSATION, PENSION
AND INSURANCE
OVERSIGHT HEARING ON ESTATES OF
INCOMPETENT VETERANS
MARCH 24, 1988

GOOD MORNING LADIES AND GENTLEMEN, AND WELCOME TO OUR FIRST MEETING OF THE SECOND SESSION OF THE 100TH CONGRESS.

THE PURPOSE OF THIS OVERSIGHT HEARING IS TO REVIEW AND DISCUSS ISSUES REGARDING BENEFITS PAYABLE TO INCOMPETENT VETERANS AND, PARTICULARLY, TO EVALUATE A RECOMMENDATION MADE BY THE VA INSPECTOR GENERAL TO LIMIT THE AMOUNT OF SUCH ESTATES OR PREVENT SUCH SUMS FROM BEING INHERITED BY DISTANT RELATIVES.

IN SUMMARY, THE INSPECTOR GENERAL STATES THAT, AS OF 1987, THERE WERE SOME 14,800 INCOMPETENT VETERANS RATED TOTALLY DISABLED DUE TO SERVICE-CONNECTED CONDITIONS WHO HAVE NO SPOUSE, CHILD, OR DEPENDENT PARENT. APPROXIMATELY 24 PERCENT OF THESE VETERANS HAVE ESTATES IN EXCESS OF $100,000, AND CLOSE TO 50 PERCENT ARE IN EXCESS OF $50,000.

CERN RAISED BY THE INSPECTOR GENERAL IS THAT, UNDER
W, THE GREAT NUMBER OF THESE ESTATES ARE BEING
O BY DISTANT RELATIVES. IT IS ESTIMATED THAT $648
N ASSETS DERIVED FROM VA FUNDS WILL BE INHERITED
IVES OTHER THAN A SPOUSE, CHILD, OR DEPENDENT
THE INSPECTOR GENERAL ESTIMATES THAT FEDERAL
COULD BE REDUCED BY ABOUT $156 MILLION IN THE
AR AND ABOUT $1.9 BILLION DURING THE LIFE
ICY OF THE AFFECTED VETERANS IF LEGISLATION WERE
TO LIMIT THE AMOUNT OF VA DERIVED FUNDS IN THE
OF THESE INCOMPETENT VETERANS.

HIEF BENEFITS DIRECTOR HAS OPPOSED THE INSPECTOR
S RECOMMENDATION ON THE BASIS THAT IT WOULD
NATE AGAINST INCOMPETENT VETERANS AND CREATE A
ON THE VA. THE CHIEF BENEFITS DIRECTOR FURTHER
S THAT ALTHOUGH THE INSPECTOR GENERAL PROPOSAL
EDUCE OUTLAYS, IT WOULD NOT RESULT IN SAVINGS. I
AND THAT THE ISSUE WAS REFERRED TO THE
RATOR WHO CONCLUDED THAT PROPOSING THE INSPECTOR
S RECOMMENDATION WOULD NOT BE IN THE BEST
S OF THE VETERANS ADMINISTRATION.

I AM DEEPLY CONCERNED THAT, IN A TIME WHEN WE ARE FACING ALMOST CERTAIN BUDGET CUTS, THAT VETERANS BENEFITS, FUNDED BY FEDERAL TAX DOLLARS, MAY ULTIMATELY BE WINDING UP IN THE HANDS OF PEOPLE WHO THE VETERAN BARELY KNEW. THAT IS WHY WE NEED TO TAKE A CLOSE LOOK AT WHAT MAY BE A REASONABLE, AND I EMPHASIZE REASONABLE, WAY TO ADDRESS THIS PROBLEM. TIME AND TIME AGAIN THE VA HAS COME UP HERE WITH PROPOSALS THAT WOULD PENALIZE OR TAX VETERANS. FOR ONCE, HOWEVER, WE MAY ACTUALLY BE LOOKING AT A WORKABLE AND FAIR APPROACH CONSISTENT WITH THE PURPOSES OF THE VA'S COMPENSATION AND PENSION PROGRAMS, AND GOVERNMENTAL INTERESTS THAT WOULD SAVE MONEY, BUT NOT PENALIZE ANY VETERANS.

THERE IS NO LEGISLATION PENDING THAT WOULD IMPLEMENT THIS PROPOSAL. HOWEVER, I BELIEVE THE SUBCOMMITTEE HAS AN OBLIGATION TO VETERANS AND THE AMERICAN TAXPAYER TO EXPLORE OPTIONS OF THIS SORT. THAT IS WHY WE ARE HERE TODAY. I DO WANT TO MAKE IT CLEAR, AGAIN, THAT THIS IS AN OVERSIGHT HEARING, NOT A LEGISLATIVE HEARING. BE ASSURED THAT THE SUBCOMMITTEE WILL EXPLORE THIS ISSUE IN A MOST CAUTIOUS MANNER AND WITH DUE REGARD TO THE CONCERNS SET FORTH BY THE CHIEF BENEFITS DIRECTOR AS WELL AS SERVICE ORGANIZATIONS.

REMARKS BY

HONORABLE BOB MCEWEN

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE

March 24, 1988

THANK YOU, MR. CHAIRMAN.

THE ISSUE BEFORE US TODAY HAS BEEN THE SUBJECT OF CONSIDERABLE CONCERN FOR A LONG PERIOD OF TIME. I CONGRATULATE YOU FOR SCHEDULING A HEARING UPON IT.

MR. CHAIRMAN, THE TESTIMONY OF MR. JOHN VOGEL THIS MORNING GIVES US AN EXCELLENT HISTORY OF CURRENT LAW AND INDICATES A NUMBER OF REASONS WHY THAT LAW SHOULD NOT BE CHANGED. ON THE OTHER HAND, THE INSPECTOR GENERAL TAKES THE VIEW THAT AN INHERITANCE OF A SINGLE NON-INSTITUTIONALIZED INCOMPETENT VETERAN SHOULD NOT GO TO DISTANT HEIRS. THE INSPECTOR GENERAL'S REPORT IN THIS REGARD SETS FORTH A NUMBER OF EXAMPLES OF DISTANT COUSINS IN FOREIGN COUNTRIES WHO MAY NOT EVER HAVE SEEN OR KNOWN A VETERAN INHERITING LARGE SUMS OF MONEY, AND SO, MR. CHAIRMAN, THE ISSUE IS JOINED.

I LOOK FORWARD TO THE TESTIMONY THIS MORNING AND TRUST THAT FROM IT OUR SUBCOMMITTEE CAN COME TO A JUDGMENT AS TO WHETHER OR NOT A CURRENT LAW SHOULD BE AMENDED.

THANK YOU, MR. CHAIRMAN.

STATEMENT OF

RENALD P. MORANI

ACTING INSPECTOR GENERAL

VETERANS ADMINISTRATION

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE

OF THE

COMMITTEE ON VETERANS' AFFAIRS

OF THE

U.S. HOUSE OF REPRESENTATIVES

March 24, 1988

Mr. Chairman and Members of the Subcommittee:

I am pleased to discuss the results of our audit of Estates Maintained for Incompetent Veterans.

The Veterans Administration (VA) is authorized by 38 United States Code 3202 to make payments to fiduciaries of incompetent beneficiaries. The Department of Veterans Benefits maintains oversight of fiduciaries through each of the Department's 58 regional offices. Under current law, the amount of funds derived from VA benefits which may accumulate in the estate of an incompetent veteran without dependents is unrestricted, except during certain periods when the veteran is institutionalized at government expense. Additionally, there is virtually no Federal restriction on who may inherit such funds. Inheritance is subject to the laws of States.

For incompetent veterans under the care of the government, Public Law 86-146 was enacted August 7, 1959 to establish safeguards relative to the accumulation and final disposition of VA-derived benefits. The purpose of the law was to preclude inheritance by distant heirs by (1) limiting the amounts of VA-

derived funds in the veteran's estate that might be inherited, and (2) prohibiting the inheritance of amounts in personal funds of patients accounts.

In 1980, the former Chairman of the House Committee on Veterans' Affairs wrote the Comptroller General of the United States requesting an audit to determine the extent that incompetent veterans' estates held by fiduciaries would be inherited by relatives, other than the immediate family, of the veterans. The letter expressed concern about such inheritance, stating that: "...Congress intended that distant relatives should not be enriched through benefits intended for veterans or their immediate families. However, large estates consisting of VA benefits are evidently still enriching distant relatives who may have had very little to do with the veteran and were not affected by his service to the United States."

The General Accounting Office (GAO) responded to the Congressional request and found that an estimated $541 million in VA-derived funds in incompetent veterans' estates would be inherited by heirs other than spouse, children, or dependent parents (GAO Report HRD-82-1, February 10, 1982). GAO recommended that Congress enact legislation to preclude inheritance of funds derived from VA benefits by survivors other than spouse, child or dependent parent. GAO's proposal would not affect the amount of assets which would remain under the control of the fiduciary during the veteran's lifetime. The Chairman of the House Committee on Veterans' Affairs introduced such legislation in March 1982, but it was not voted out of committee. The VA did not support the legislation proposed by GAO because of concern about lawsuits by potential heirs and the increased workload within the VA required to recover funds from veterans' estates.

In 1987, the Office of Inspector General completed an audit of estates maintained for incompetent veterans. The audit focused on the 14,800 incompetent veterans receiving total disability compensation who have no dependents. We analyzed a statistical sample of 968 such veterans and found that an estimated $648 million in assets derived from VA compensation benefits, are accumulating in the hands of fiduciaries. At the time of the veteran's death, these funds would be distributed under the laws of the States which permit inheritance by remote heir. Our audit cited examples of veterans' estates inherited by distant relatives, some of whom had little or no contact with the veteran. Others, we found, resided in foreign countries and have never met the veteran. We recommended that the Chief Benefits Director propose legislation that would limit the amount of funds held by fiduciaries subject to inheritance by relatives other than spouse, children, or dependent parents.

The Office of Inspector General proposal is different from GAO's proposal which would restrict who could inherit VA-derived funds of incompetent veterans. Our proposal would minimize the inheritance by remote heirs by limiting the size of the available estates under the direct control of fiduciaries. The legislation advocated by the Office of Inspector General would reduce outlays for compensation by approximately $156 million the first year of enactment and by about $1.9 billion during the expected lifetime of the beneficiaries, without affecting the availability of funds for the care and maintenance of the beneficiaries. These savings could be used to benefit other veteran programs or returned to the U.S. Treasury.

The proposed changes to current law would offer adequate protection to the incompetent veterans and could be

administered in a reasonable manner. The most practical and equitable legislation would:

- o redirect disability payments for incompetent veterans without dependents to a trust account administered by the Federal Government or treat such payments as a contingent liability, when liquid assets under the control of the fiduciary exceed a prescribed upper limit, such as $25,000; and resume payments directly to the fiduciary when liquid assets fall below a prescribed lower limit, such as $10,000;

- o restrict inheritance only to spouse, children (regardless of age or marital status), or dependent parents;

- o provide for disbursement of all funds on account to the veteran if competency is restored.

The proposal would not affect the amount of money used for the care and maintenance of the incompetent veterans. If disability compensation payments were redirected to a trust account or treated as a contingent liability, the fiduciary would have sufficient funds in the estate to provide for the veteran's welfare. Payments directly to the fiduciary would be resumed when the size of the estate fell below the prescribed level. There would be no impact on the day-to-day life of the veteran, only on the size of estate under the fiduciary's control. However, this reduction would be offset by increases in funds in the trust account or treated as a contingent liability. It must be emphasized that this proposal would not deny or limit any benefits to the veteran beneficiary. It would simply restrict the amount of assets controlled by the fiduciary, and provide for some assets to remain under the

control of the Federal Government in a manner similar to personal funds of patients' accounts. In fact, our proposal is not significantly different from current laws which limit inheritance of incompetent veterans' assets in personal funds of patients accounts or estate restrictions for incompetent veterans without dependents institutionalized at government expense. (Public Law 86-146)

Many of the individual estates maintained for incompetent veterans receiving total disability compensation are quite large--24 percent of such veterans without dependents have estates with liquid assets in excess of $100,000, and another 23 percent have estates with liquid assets over $50,000 but less than $100,000. The average estate had an annual increase of $7,200. These funds are subject to misuse or misappropriation by the fiduciary. Since 1983, the Office of Inspector General has investigated over 100 cases involving theft or misuse of funds by fiduciaries. In a recent case, a court-appointed guardian was sentenced to 10 years imprisonment and ordered to make restitution for misappropriating over $195,000 from two veterans' estates.

Our proposal can be accomplished without a significant increase in the VA's workload. We anticipate that legislation would be broad enough to allow the VA to monitor the size of the veteran's estate through periodic accountings from the fiduciary which are already required. Benefit awards could be adjusted effective the date the VA learns through accountings or other means that the estate exceeds the established limit or the date of last benefit payment following notice to the VA. The additional 10,000 award actions initially required nationwide are insignificant compared to the annual total of 3.25 million compensation and pension award actions.

The VA General Counsel stated that his office had no legal objection to our proposal. The Director, Office of Budget and Finance recommended that legislation be considered to suspend payments when estates exceed a legislated maximum level. However, the Chief Benefits Director expressed concern that such legislation would constitute inequitable treatment of incompetent veterans and concern about the cost of administering the proposed legislation. The issue was referred to the Administrator who concluded that proposing such legislation would not serve the best interests of the Veterans Administration.

If the inheritance of funds derived from VA benefits by distant relatives is considered an unintended and inequitable outcome of the VA's program to protect the financial interests of incompetent veterans and conserve their estates, some change is necessary. Clearly, these funds were appropriated to benefit veterans and their dependents. To the extent that these benefits ultimately pass to distant relatives, the purpose for which the funds were appropriated is not achieved. Legislation recommended by my office would minimize inheritance of VA-derived funds by remote heirs without adversely affecting the incompetent veteran or administratively overburdening the VA.

That concludes my statement, Mr. Chairman. We will be pleased to respond to any questions that you may have.

REPORT OF THE OFFICE OF THE INSPECTOR GENERAL

AUDIT OF THE VA FIDUCIARY PROGRAM

SUMMARY

The Office of Inspector General audited the Veterans Administration's (VA's) fiduciary program to assess the need for program changes to minimize inheritance of VA-derived estates by remote heirs and reduce program vulnerability to fraud and abuse. Under the provisions of 38 U.S.C. 3202, VA makes payments to fiduciaries on behalf of incompetent beneficiaries. Supervision over such payments is the responsibility of the Department of Veterans Benefits (DVB). As of September 1986, there were 67,122 incompetent veterans with active awards in the VA's Compensation and Pension System. Annual payments to incompetent veterans total about $610 million.

Currently, the amount of funds derived from VA benefits which may accumulate in the estate of an incompetent veteran without dependents is unrestricted, except during periods when the veteran is institutionalized at government expense. There is virtually no Federal restriction on who may inherit funds in estates maintained by fiduciaries of incompetent veterans. In the absence of any heir recognized by State law, funds derived from VA compensation and pension benefits which would otherwise escheat to the State, revert instead to the Federal Government. In practice, however, very little escheats to the Federal Government.

The former Chairman of the House Committee on Veterans' Affairs expressed concern that estates of incompetent veterans consisting of VA benefits had been inherited by remote heirs. In a September 1980 letter to the Comptroller General of the United States he stated: "...Congress intended that distant relatives should not be enriched through benefits intended for veterans or their immediate families. However, large estates consisting of VA benefits are evidently still enriching distant relatives who may have had very little to do with the veteran and were not affected by his service to the United States."

Our audit showed that an estimated $648 million in assets derived from VA compensation benefits currently held by fiduciaries of incompetent veterans receiving total disability compensation will be inherited by relatives other than spouse, children, or dependent parents. Many of the individual estates maintained for these veterans are very large -- 24 percent of the veterans without dependents have estates in excess of $100,000. To minimize inheritance of VA derived estates by remote heirs, we recommend that the Chief Benefits Director propose legislation to limit the amount of VA derived funds held by fiduciaries of incompetent veterans which is subject to inheritance by distant relatives. If necessary, additional staff should be provided to effectively administer VA's oversight responsibilities. Such legislation should reduce Federal outlays by about $156 million in the first year of enactment and by about $1.9 billion during the life expectancy of the affected veterans. These savings could be used to benefit other veterans or returned to the U.S. Treasury.

The General Counsel stated that his office had no legal objection to the report and deferred comment on the policy matters involved to the Chief Benefits Director. The Director, Office of Budget and Finance recommended that legislation be considered to suspend payments when estates exceed a legislated maximum level. The Chief Benefits Director stated that he was not prepared, at this time, to propose legislation to preclude inheritance by remote heirs. He cited concerns regarding equity and other reasons for his position. The full texts of the comments received are contained in the Appendices.

We gave careful consideration to the views expressed by all the commenters and continue to advocate the actions recommended to the Chief Benefits Director. We consider the recommendation to be unresolved.

We are continuing our review of the VA's fiduciary program and will examine the effectiveness of internal controls in the administration of the program. This will potentially include audit verification of asset balances in estates of incompetent beneficiaries. These issues may be addressed in a separate report.

Office of Inspector General
OFFICE OF INSPECTOR GENERAL

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PART I

INTRODUCTION

A. Purpose

The Office of Inspector General audited the VA's fiduciary program to assess the need for program changes to minimize inheritance of VA-derived funds by remote heirs.

B. Background

The VA, under provisions of 38 U.S.C. 3202, is authorized to make payments to fiduciaries on behalf of incompetent beneficiaries. Payments may be made to court-appointed fiduciaries or to payees designated by the VA. Supervision over the fiduciary program is the responsibility of DVB.

Supervision of the fiduciary program at each VA regional office is carried out by the fiduciary unit in Veterans Services Division. The fiduciary unit conducts field examinations to assess competence, adjustment, and personal welfare of the beneficiary; to review fund usage and performance of the fiduciary; and to determine if the needs of the beneficiary are being met. Additionally, the unit requires certain fiduciaries to make periodic accountings to ensure assets are being handled properly. Accountings are required from all court-appointed fiduciaries and in other cases involving large estates or large benefit payments. The fiduciary unit maintains a file system of principal guardianship folders and uses an automated diary system to control the timeliness of field examinations and accountings.

The VA makes compensation and pension payments totaling about $610 million annually for incompetent veterans. As of September 1986, there were 67,122 incompetent veterans with active awards in the VA's Compensation and Pension System. Of this number, 30,133 (45 percent) were rated totally disabled due to service-connected conditions.

Incompetent veterans are an aging group -- 61 percent are 60 years old or over; 79 percent are 50 years old or over. Sixty-nine percent of incompetent veterans have no dependents. Of the 31 percent that have dependents:

-- 19 percent have a spouse only;
-- 6 percent have a spouse and children;
-- 3 percent have children only; and
-- 3 percent have dependent parents.

of the audit included an analysis of estates for a statistical sample of 968 incompetent veterans total disability compensation, who have no dependents. was randomly selected from a universe of 14,839 such Using Estate Summaries (VA Form 27-4707) from Fiscal through 1986, obtained from 56 VA regional offices, d pertinent information about the veterans, including ipts, expenditures, liquid assets (cash, certificates , or other negotiable instruments), net increases or in estates, age, and type of fiduciary.

of the audit also included onsite reviews of program at five VA regional offices: Atlanta, Cleveland, St. Petersburg, and San Francisco. During the onsite examined active and closed principal guardianship claims folders, fiduciary accountings, accounts , and the Automated Diary and Index System. We also he legislative history and a prior GAO report related fiduciary program as well as pertinent laws, s, and policies.

was made in accordance with generally accepted auditing standards.

PART II

RESULTS OF AUDIT

Finding and Recommendation

Legislation Is Needed to Prevent Remote Heirs from Inheriting VA-Derived Funds in Incompetent Veterans' Estates

Finding

An estimated $648 million in assets derived from VA compensation benefits currently held by fiduciaries of incompetent veterans receiving total disability compensation will be inherited by relatives other than spouse, child, or dependent parent. Many of the individual estates maintained for these veterans are very large -- 24 percent of the veterans without dependents have estates with liquid assets in excess of $100,000. Currently, the amount of funds derived from VA benefits which may be accumulated by fiduciaries is unrestricted except during certain periods of institutionalization. Inheritance of such funds is subject to the laws of the various States which permit inheritance by remote heirs. Further legislation is needed to minimize inheritance of VA-derived estates by remote heirs by limiting the amount of funds held by fiduciaries of these incompetent veterans. Such legislation will reduce Federal outlays by about $156 million in the first year and by about $1.9 billion during the expected lifetime of the affected beneficiaries.

Recommendation

We recommend that the Chief Benefits Director: (a) propose legislation authorizing VA to limit the amount of funds held by fiduciaries of incompetent veterans subject to inheritance by relatives other than spouse, children, or dependent parents; and, (b) provide for additional staff, if necessary, to effectively administer VA's oversight responsibilities.

Discussion

Background

Under current law the amount of funds derived from VA benefits which may accumulate in the estate of an incompetent veteran without dependents is virtually unrestricted, except during periods when the veteran is institutionalized at government expense. During such periods benefit payments are stopped if the veteran's estate exceeds $1,500. Additionally, there is virtually no Federal restriction on who may inherit such funds. Inheritance of the funds is essentially subject to the laws of the various States. While these laws vary as to the specific

classes of relatives entitled to inherit when a person dies intestate, all permit inheritance by remote relatives (that is, relatives other than spouse, children, or dependent parents).

In the absence of any heir recognized by State law, funds derived from VA compensation and pension benefits which would otherwise escheat to the State, revert instead to the Federal Government. In practice, however, very little escheats to the Federal Government. Although DVB reported 60 cases in Fiscal Year 1986 with recoveries of $1.2 million, one case, in which the veteran died in 1977, accounted for $333,775 (29 percent) of the funds recovered.

In contrast to funds administered by fiduciaries, gratuitous funds (VA compensation and pension) of incompetent veterans held in VA administered personal funds of patients trust accounts are not subject to State inheritance laws. Personal funds of patients accounts contain funds held in trust for patients in VA medical facilities and certain other institutions. Upon the death of an incompetent veteran, VA compensation or pension benefits deposited in a personal funds of patient account will be paid only to surviving spouse, children (regardless of age or marital status), or dependent parents.

Congressional intent and desired program results are reflected in a September 1980 letter from the former Chairman of the House Committee on Veterans' Affairs to the Comptroller General of the United States requesting an audit to determine the extent that incompetent veterans' estates held by fiduciaries would revert to remote heirs. This letter stated that: "...Congress intended that distant relatives should not be enriched through benefits intended for veterans or their immediate families. However, large estates consisting of VA benefits are evidently still enriching distant relatives who may have had very little to do with the veteran and were not affected by his service to the United States."

The General Accounting Office (GAO) responded to this request and found that an estimated $541 million in VA-derived funds in incompetent veterans' estates would be inherited by heirs other than spouse, children, or dependent parents (GAO Report HRD-82-1, February 19, 1982). GAO recommended that Congress enact legislation to further limit who may inherit VA-derived funds in the estates of incompetent veterans. The Chairman of the House Committee on Veterans' Affairs introduced such legislation in March 1982, but it was not voted out of committee.

Although the Agency has historically supported the premise that estates derived from gratuitous benefits paid to incompetent

veterans should be prevented from passing to relatives who have no equitable claim to them, Agency management did not fully support the legislation proposed by GAO. VA management expressed concern that the specific legislation proposed by GAO was legally or administratively defective, would result in numerous law suits by potential heirs, and would greatly increase VA's workload. (Our proposal incorporates a significantly different approach).

During recent cyclic audits of VA regional offices, the Office of Inspector General (OIG) found that large estates consisting primarily of VA benefits were still being maintained for incompetent veterans without dependents. DVB personnel responsible for the fiduciary program told us they were concerned about the continuing accumulation of large estates and the ultimate inheritance of these estates by distant heirs. They believed there were practical alternatives to GAO's proposed legislation which could achieve the goal of preventing the inheritance of VA-derived funds in incompetent veterans' estates by remote heirs. These alternatives contain similarities to our recommendation and were considered during our audit of the VA fiduciary program.

Large Estates Are Accumulating for Incompetent Veterans Without Dependents

We reviewed a random statistical sample of 968 veterans' estates, selected from an audit universe of 14,829 incompetent veterans receiving total disability compensation who had no dependents. (See Exhibit A for audit methodology and distribution of the audit universe and sample by regional office.) The average estate in our sample had liquid assets of $61,900 and 24 percent had liquid assets in excess of $100,000. (See Exhibit B.)

We estimate that liquid assets in the estates of incompetent veterans without dependents total $919 million. Of this amount, $708 million was identified as VA assets (i.e. derived from VA benefits). Approximately $60 million of this amount will be subject to inheritance by adult children of the incompetent veteran. (See Exhibit C.) The remaining $648 million will be inherited by relatives other than spouse, children, or dependent parents. Funds in estates of veterans in our audit universe are increasing rapidly. Only 9 percent of the estates experienced an annual net loss in assets. The average estate had an annual increase of $7,200, for a total annual increase of about $107 million. About $76 million of this annual increase will be subject to inheritance by other than spouse, children, or dependent parents.

Federal Outlays Can be Significantly Reduced

We analyzed the monetary impact of further legislation

limiting the amount of funds held by fiduciaries of incompetent veterans subject to inheritance by relatives other than spouse, children, or dependent parents. In our opinion the most practical legislation would:

-- redirect disability payments for incompetent veterans without dependents to a trust account administered by the Federal Government, or treat such payments as a contingent liability, when liquid assets in the estate maintained by the fiduciary exceed a prescribed upper limit (for the purposes of our analysis we used $25,000 as the upper limit);

-- resume payments directly to the fiduciary when liquid assets fall below a prescribed lower limit (we used a lower limit of $10,000); and

-- restrict inheritance of funds in the account maintained by the Federal Government, or funds treated as a contingent liability, to the following classes of surviving relatives: spouse, children (regardless of age or marital status), or dependent parents, as is now the case with gratuitous funds in personal funds of patients accounts.

During the first year of enactment, benefits for about 9,200 incompetent veterans with estates in excess of $25,000, who had no dependents, would be redirected to accounts maintained by the Federal Government, or treated as a contingent liability, resulting in an estimated $156 million reduction in Federal outlays. We estimate that of this amount about 9 percent would be inherited by adult children (these veterans do not have a spouse, dependent parents, or dependent children). The remaining $142 million would revert to the Federal Government. (See Exhibit D.) During the expected lifetime of the 14,839 incompetent veterans without dependents, outlays would be reduced by about $1.9 billion. Approximately $1.7 billion would revert to the Federal Government. (See Exhibit E.)

Remote Heirs Are Inheriting Large Estates Derived From VA Benefits

The previous GAO audit, conducted at the request of the former Chairman of the House Committee on Veterans' Affairs, focused on inheritance of deceased veterans' estates. During their review of four VA regional offices (St. Paul, Washington, D.C., Los Angeles, and Boston) GAO identified 251 cases in which relatives other than spouse, children, or dependent parents inherited a total of $4.7 million derived from VA benefits. GAO estimated that, nationwide, $541 million would be inherited by remote heirs.

Although our audit focused primarily on incompetent veterans with active benefit awards, we also found cases in which substantial estates had been inherited by distant relatives. Some examples follow:

-- An incompetent veteran of World War I, who had immigrated to the United States from Lithuania in 1907, died in 1978 leaving an estate of $87,900, of which $77,800 was identified as being derived from VA benefits. The VA, believing that the veteran had no relatives, filed a claim to have the estate revert to the Federal Government. The claim was withdrawn in 1983 when it was established that the veteran had six nephews and nieces living in the Soviet Union. The estate was distributed equally among them.

-- A veteran of World War II, incompetent since 1950, died in April 1986 leaving an estate of $185,600, of which $177,600 was identified as being derived from VA benefits. The estate will be disbursed among cousins of the veteran and nieces and nephews of another cousin who predeceased the veteran.

-- An incompetent veteran, who immigrated to the United States from Italy, died in 1977 leaving an estate of $47,300. Since the veteran had no known relatives, the Veterans Administration filed a claim to have the estate revert to the Federal Government. The probate court having jurisdiction ordered the estate turned over to the VA. However, in 1981 assets from the estate were disbursed by the VA to 17 relatives who were found to be living in Germany and Italy.

-- An incompetent veteran of World War II died in November 1983, leaving an estate of $81,400 derived solely from VA benefits. A final judgment from the probate court in April 1986 awarded $31,310 in administrative and legal fees to the attorneys and guardian of the estate. The remaining funds were equally divided between the illegitimate daughter of one deceased cousin and the estate of another deceased cousin.

We also found numerous instances in which large estates maintained for incompetent veterans derived from VA benefits will likely be inherited by distant relatives. For example, an incompetent 62-year old veteran receiving VA compensation of $1,494 monthly has an estate of over $200,000 entirely derived from VA benefits. The fiduciary, a bank, pays $668 a month for the veteran to live in a residential care facility and provides him $150 a month for incidentals. The value of his estate is increasing by about $20,000 annually. This veteran has no

known relatives living in the United States. His estate will likely be inherited by relatives in China who have not seen him since he immigrated to the United States in 1940.

In another case, the only known relatives of an incompetent, female veteran living in a residential care home are an aunt and a cousin. The principal guardianship folder showed that the only contact the veteran has with these relatives is a Christmas card each year from the aunt. The cousin reportedly changed her phone number so the veteran could not call her. The veteran's estate, currently worth about $150,000, will be inherited by one of these two individuals, unless they predecease her.

Recommended Legislation Can Assist in Preventing Misuse of Funds by Fiduciaries

In addition to reducing funds in veterans estates subject to inheritance by remote heirs, the recommended legislative change would also reduce funds subject to misappropriation by fiduciaries. Since 1983 the VA OIG Office of Investigations has investigated 112 cases which involved improper use or theft of funds by fiduciaries. The total dollar amount involved was over $1.4 million. In one case in our random sample of incompetent veterans without dependents, the fiduciary is under investigation for embezzlement of approximately $89,000 derived from VA benefits. In another example of fiduciary misconduct, an attorney acting as the fiduciary of an incompetent veteran, was convicted in 1986 of misappropriating over $100,000. The attorney, who served as the fiduciary from February 1978 to October 1983, admitted to transferring over $86,000 to his own use, leaving the veteran a balance of $131. Most recently, a court appointed guardian was sentenced to 10 years imprisonment and ordered to make restitution for misappropriating over $195,000 from two veteran's estates.

Benefits of Changes in the Law

The legislative changes proposed would have several beneficial effects: 1) Federal outlays would be reduced by $156 million the first year after enactment and $1.9 billion during the life expectancy of the affected veterans currently entitled; 2) about $1.7 billion would be protected from inheritance by remote relatives and could be reprogrammed to benefit other veterans; 3) the amount of VA derived funds subject to misuse by fiduciaries would be substantially reduced; and 4) all of the cited beneficial effects would be accomplished without affecting the availability of funds for the care and maintenance of beneficiaries.

Our proposal envisions that funds due incompetent veterans with no dependents and estates in excess of a prescribed upper limit would be redirected to accounts maintained within the Federal Government or treated as contingent liabilities which would be funded at the time disbursements are made. In either case outlays of the Government would be reduced by $156 million in the first year. However, treating such payments as contingent liabilities would have an immediate impact on the Compensation and Pension Appropriations since almost none of the $156 million in contingent liabilities would be disbursed in the first year.

In our opinion redirecting benefits to accounts within the Federal Government, or treating such payments as contingent liabilities, would be the most efficient and effective way to limit inheritance by remote heirs of incompetent veterans. There are significant advantages over other proposals which would further prohibit inheritance of funds derived from VA benefits by heirs other than spouse, children, or dependent parents. Our proposal would provide an immediate reduction in Federal outlays. Other options restricting inheritance would take many years to produce a significant recovery of funds, especially since benefits paid before enactment would not likely be subject to restrictions on inheritance.

Other options restricting inheritance would require the VA to recover funds from estates of deceased veterans. Recovery of funds in this manner can be very difficult and time consuming--in one case recovery of $333,775 took 9 years. Our proposal would further limit the amount of incompetent veterans' funds subject to theft or misuse by fiduciaries, since significant VA derived assets would not accumulate in estates administered by fiduciaries. Options limited to restriction of inheritance would not limit or reduce assets at risk under the control of the fiduciaries.

Implementation of Proposed Legislation

Our proposal can be successfully implemented without a significant increase in DVB's workload. Although we cannot anticipate the specific provisions of legislation which may eventually be enacted, we anticipate that it would be broad enough to allow DVB to monitor the size of veterans estates through periodic accountings which are already required. The fiduciary unit could notify the Adjudication Division when estates exceed the established upper limit. Awards could then be adjusted effective the date of discovery (i.e., the date the VA learns through accountings or other means that the estate exceeds the established limit) or the date of last benefit payment following such a discovery. This method of implementation would create very little additional work for the

fiduciary unit. The additional 9,000 to 10,000 award actions initially required nationwide are insignificant compared to DVB's annual total of 3.25 million compensation and pension award actions.

If the specific language of the eventual law required closer monitoring of the 9,000 - 10,000 cases initially affected by proposed changes, implementation would require additional resources. As of September 30, 1986, there were 407 employees involved in the administration of the fiduciary program VA-wide, with direct salary costs of $10.6 million annually. These employees conducted 98,000 field examinations and audited 35,000 fiduciary accountings in Fiscal Year 1986. If implementation required an additional full-time employee at each regional office, the direct salary costs would be about $1.5 million (58 additional employees with an average annual salary of $26,000), less than 1 percent of the anticipated first year reduction in outlays.

Our proposal could also involve some computer programming changes in the Compensation and Pension System. Based on discussions with DVB staff responsible for computer applications and the OIG's automatic data processing support staff, we found that a segment could be added to the Compensation and Pension System to implement recommended changes. However, the resources required to implement necessary changes cannot be estimated until specific requirements and specifications are identified.

We expect that such legislation would incorporate provisions to disburse funds on account to the veteran if competency is regained.1/ Provisions could also be made for the payment of interest when funds are disbursed to the veteran or recognized heirs of a deceased veteran (spouse, children, dependent parents).

An Alternative Proposal Could Also Significantly Reduce Outlays for Compensation

In response to GAO's proposal to establish Federal inheritance laws for VA funds in incompetent veterans estates, staff members in DVB's Veterans Assistance Service developed a concept called the Supervised Veterans Trust. Under this concept, benefit funds surplus to the needs of an incompetent veteran would be held in trust by the Federal Government. Funds held in trust could be invested by the Government, and interest prorated to each account. Money in the trust fund would be disbursed to meet any lawful need of the veteran or his dependents.

1/DVB program officials do not maintain statistics on restored competency. However, they stated they believed it to be a small percentage of all cases, especially among veterans who had been incompetent for long periods.

While the Supervised Veterans Trust concept has merit, in our opinion, it would be more difficult to administer than the proposal we recommend. We believe disbursing varying amounts to the fiduciary would require more field examinations, accountings, and benefit award actions than our proposal.

The concept of the Supervised Veterans Trust would, nevertheless, meet the intent of our recommendation if it contained provisions which would (i) reduce the amount of VA-derived funds held by the fiduciary, and (ii) restrict inheritance of funds in the trust fund to spouse, children (regardless of age or marital status), and dependent parents. The amount of VA-derived funds held by the fiduciary could be reduced by directing all benefit payments to the trust fund when liquid assets in the estate of an incompetent veteran without dependents exceeded a specific amount.

Conclusion

The VA has an obligation to provide assistance to disabled veterans and their dependents. However, this obligation does not extend to other relatives of veterans. We believe that VA compensation and pension payments should not enrich distant relatives of incompetent veterans. Under current law, however, distant relatives ultimately benefit from the accumulation of large estates maintained for incompetent veterans without dependents. Our proposal will allow for equitable treatment of incompetent veterans while reducing the amount of funds derived from VA benefits which will be inherited by distant relatives.

Chief Benefits Director's Comments

The Chief Benefits Director stated that he was not prepared to initiate a legislative proposal to preclude inheritance by remote heirs, at this time. In a memorandum dated March 11, 1987, he stated that:

- the issue was complex and requires additional analysis;
- there were legal and constitutional issues that require review;
- opinion varied on how best to administer the audit proposal.

In a memorandum dated April 14, 1987, he:

- retracted legal objections;
- reiterated equity considerations in treating incompetent veterans differently from competent veterans;

- indicated that Congress has made a "conscious effort" to stay away from estate distribution matters;

- reiterated concerns regarding administration of our proposal;

- reiterated concerns regarding conversion of estates to real assets by fiduciaries to circumvent law;

- stated that no savings would accrue to the Department and additional staff would be required to administer the program; and,

- other issues.

The full text of the Chief Benefits Director's comments is contained in Appendix 1.

General Counsel's Comments

The General Counsel stated his office had no legal objection to the report. He deferred judgement on the policy matters involved to the Chief Benefits Director. The full text of the General Counsel's comments is contained in Appendix 2.

Director, Office of Budget and Finance's Comments

The Director, Office of Budget and Finance noted that the audit recommendation was similar to current provisions in Title 38 requiring suspension of payment when veterans are institutionalized at government expense. He recommended that legislation be considered to suspend payments to incompetent veterans when estates exceeded a legislated maximum level. The full text of his comments is contained in Appendix 3.

Office of Inspector General Comments

We have carefully considered the comments provided by the Chief Benefits Director. Although these comments contained a number of questions, we continue to advocate adoption of our recommendation that legislation be proposed to minimize inheritance of VA-derived funds by remote heirs.

The Chief Benefits Director expressed concern regarding the legality or constitutionality of the proposed legislation. During the audit, extensive discussions were held with representatives of the General Counsel who expressed no substantive objections regarding the legality or constitutionality of such legislation. The written comments from the General Counsel likewise do not reflect concerns about the proposed legislation's legality or constitutionality.

The Chief Benefits Director also expressed concern that service organizations and the public at large would perceive such legislation as a denial of basic entitlement rights. Our proposal would not deny the veteran beneficiary any entitlements, nor would it constitute a "cap" on the assets which could be accumulated. It would simply restrict the amount of assets controlled by the fiduciary, and permit some assets to remain under control of the Federal Government in a manner similar to personal funds of patient accounts. It must be emphasized that our recommendation would limit inheritance of VA-derived funds by remote heirs, it would not deny or limit any benefits to the beneficiary.

The Chief Benefits Director's also indicated that the proposed legislation may be discriminatory. Our laws have historically recognized that the best interests of psychiatrically disabled persons, and society in general, is served by denying certain civil liberties in favor of custodial supervision. Additionally, Congress has consistently expressed the view that distant relatives not be enriched through benefits intended for veterans and their dependents. This principle is reflected throughout the legislative history on the subject. Our proposal is no different from current controls which limit inheritance of incompetent veterans' assets in personal funds of patients accounts or estate restrictions for incompetent veterans without dependents institutionalized at government expense.

The Chief Benefits Director further stated that the estate restrictions were enacted principally because the veterans were receiving "dual benefits;" that is, compensation benefits were accumulating in estates which would be inherited by distant heirs while the veteran was cared for at government expense. Such cases do, in fact, represent egregious circumstances of inheritance Congress sought to prevent. However, the legislative history shows that since the late 1950's, Congress has repeatedly focused on the issue of inheritance by distant relatives of noninstitutionalized veterans. As recently as March 1982, legislation was introduced to restrict inheritance of such estates by distant relatives.

In taking this position, Congress certainly recognized that they were proposing "discriminatory" treatment of incompetent veterans' estates vis a vis estates of competent veterans. In balance, however, Congress had believed that such legislation was in the public interest. Incompetent veterans cannot exercise control of their assets and fiduciaries, particularly those who are themselves in the line of inheritance, can be motivated to accumulate estates precisely to provide for their own personnal gain or that of other nondependent relatives. Because incompetent veterans lack legal privilege to

control their assets, estates of incompetent veterans present a logical focus for prevention of abuse.

The comments also indicated concern that the intent of the legislation could be defeated by converting liquid assets to real property. Controls currently exist to prevent abuse in this type of transaction. About 93 percent of fiduciaries administering estates exceeding $25,000 for veterans without dependents are court-appointed. Almost all court appointed fiduciaries require approval of the court to purchase real property and in all court cases the VA is an interested party which seeks to prevent improper expenditures of beneficiaries' funds. In Federal fiduciary cases, the VA has a responsibility to oversee the administration of VA funds by fiduciaries, and ensure the propriety of expenditures made on the beneficiaries' behalf.

The Chief Benefits Director also expressed concern that the proposed legislation could create inequities in the distribution of funds of a deceased veteran. Such perceived inequity occurs when a remote relative provides care for an incompetent veteran but is precluded from inheritance, while the veteran's children, who may inherit, have had no contact with the veteran. Such perceived inequities are minimized if fiduciaries adequately compensate persons providing care for incompetent beneficiaries. Additionally, these matters were considered by Congress which, nevertheless, established such limitations on distribution of funds from personal funds of patient accounts. Furthermore, funds in estates maintained by fiduciaries are subject to state laws of descent and distribution if beneficiaries die intestate, resulting in the same potential inequities noted by the Chief Benefits Director. Many incompetent veterans die intestate due to lack of testamentory capacity.

Finally, the comments stated that there would be little or no savings which would accrue to the Department by enactment of our proposal. We reiterate that if the suspend payment option is enacted, outlays of the appropriation would be reduced by about $156 million the first year of enactment.

The Chief Benefits Director stated "DVB is not prepared, at this time, to initiate a legislative proposal to preclude inheritance by remote heirs". In response to GAO's 1982 report regarding inheritance by remote heirs, DVB agreed "that more can be done to protect the interests of the government in the distribution of the estate of a deceased incompetent veteran" and stated that they would conduct a 1000 case study of incompetent veterans. However, this study was never completed and we know of no additional actions taken to limit inheritance by remote heirs. While we agree this issue is complex, we consider our recommendations to be necessary to ensure that

distant relatives are not "enriched through benefits intended for veterans or their immediate families". Our recommendation will achieve this goal while ensuring fair and equitable treatment of incompetent veterans. Again, our proposal does not "cap" or limit an incompetent veteran's benefit entitlement in any manner. The veterans would continue to receive every penny they currently receive. The only parties monetarily effected are the remote relatives who currently stand to inherit VA derived funds totalling nearly $650 million which were appropriated to benefit the veterans and their dependents.

The General Counsel recommended that we substitute the term "non-dependent heirs" for the terms "remote heir" or "distant heir" as used in the report. We recognize that for some readers the terms used may connote a more distant family relationship than all classes of potential heirs affected by our proposal. However, our proposal would permit inheritance by adult children of the beneficiary who are themselves "non-dependent." Accordingly, we have retained the terminology "remote heir" in the report.

EXHIBIT A
Page 1 of 2

AUDIT METHODOLOGY

ew of VA's fiduciary program focused on estates d for incompetent veterans who were receiving total y compensation and who had no dependents. This group iciaries was the most likely to have large estates close heirs. Using a computer extract of the VA's ion and Pension System we identified 14,839 nt veterans receiving total disability compensation dependents. The minimum annual payment for these ries was $16,020.

zed a random statistical sample of 968 veterans' elected from the audit universe of 14,839. The sample cases under the jurisdiction of 56 of the 58 VA offices. We contacted each of the 56 regional either by mail or personal visit, to obtain copies of ummaries, VA Form 27-4707, for each veteran in the Available records were reviewed to determine if had adult children.

ate Summaries contained pertinent data from the guardianship folder, such as a summary of each g showing total receipts, expenditures, value of type of fiduciary, relationship of fiduciary to amount of VA and other payments, and authorized s. We used the information from the Estate Summary tional information about non-dependent children as the our analysis and projections.

ur onsite reviews at VA Regional Offices Atlanta, , New York, St. Petersburg, and San Francisco, we that the Estate Summaries in general, accurately information contained in the principal guardianship However, there was a lack of uniformity among offices as to what portion of the veteran's net s reported by the fiduciary, should be considered "VA" portion "Other." We did not make any adjustments in tionment of assets to "VA" or "Other" categories. The quid assets shown on the Estate Summaries agreed with ntings in the principal guardianship folder.

ribution of audit universe and sample by regional shown below:

n	Regional Office	Number of Veterans In Audit Universe	In Sample
	Boston	504	29
	Providence	117	8
	New York	926	61
	Buffalo	329	21
	Hartford	175	13
	Newark	252	16
	Philadephia	373	19

EXHIBIT A
Page 2 of 2

Station No.	Regional Office	Number of Veterans In Audit Universe	Number of Veterans In Sample
311	Pittsburgh	259	11
313	Baltimore	182	12
314	Roanoke	312	29
315	Huntington	199	11
316	Atlanta	338	19
317	St. Petersburg	609	33
318	Winston-Salem	397	26
319	Columbia	202	12
320	Nashville	356	25
321	New Orleans	215	17
322	Montgomery	298	13
323	Jackson	247	15
325	Cleveland	673	52
326	Indianapolis	237	16
327	Louisville	264	15
328	Chicago	527	34
329	Detroit	575	43
330	Milwaukee	276	20
331	St. Louis	349	23
333	Des Moines	171	7
334	Lincoln	110	8
335	St. Paul	281	20
339	Denver	184	10
340	Albuquerque	123	4
341	Salt Lake City	88	11
343	San Francisco	634	58
344	Los Angeles	543	27
345	Phoenix	167	8
346	Seattle	326	22
347	Boise	34	2
348	Portland	199	13
349	Waco	601	32
350	Little Rock	243	12
351	Muskogee	292	23
354	Reno	30	1
358	Manila	49	0
359	Honolulu	82	2
362	Houston	368	25
363	Anchorage	6	0
372	Washington	151	12
373	Manchester	48	2
377	San Diego	163	8
402	Togus	147	17
405	White River Junction	32	3
436	Ft. Harrison	37	4
437	Fargo	66	5
438	Sioux Falls	56	9
442	Cheyenne	23	2
452	Wichita	184	12
455	San Juan	182	15
460	Wilmington	28	1
	TOTALS	14,839	968

EXHIBIT B

ESTIMATED DISTRIBUTION OF VETERANS IN AUDIT UNIVERSE BY ESTATE SIZE

Size of Estate	Number In Sample	Estimated Number In Universe[1]	Percentage
$100,000 and over[2]	236	3,618	24.4
50,000 - 99,999[2]	223	3,418	23.0
25,000 - 49,999[2]	142	2,177	14.7
Under $25,000	226	3,465	23.3
No Accountings	141	2,161	14.6
TOTALS	968	14,839	100.0

[1] Confidence level of 95 percent. Precision level ±4 percent.

[2] A total of 601 veterans in the sample (62.09 percent) had estates over $25,000. Thus an estimated 9,213 veterans in the audit universe had estates over $25,000 (14,839 x .6209).

EXHIBIT C

ESTIMATED TOTAL VALUE OF ESTATES IN AUDIT UNIVERSE
(Dollars in Thousands)

	No. of Veterans		VA Estate		Total Estate
A. For All Veterans in Audit Universe					
Audit Sample	968	=	$ 46,179 1/	=	$ 59,929
Audit Universe	14,839		$707,903 2/		$918,691 3/
B. For Veterans in Audit Universe Without Adult Children					
Audit Sample	877	=	$ 42,252 1/	=	$ 54,681
Audit Universe	13,444		$647,702 4/		$838,231 5/

1/ As determined by regional office personnel and recorded on Estate Summaries. We did not make adjustments to the apportionment of assets to "VA" or "Other" categories.

2/ Midpoint estimate is $707,903,000. At 95 percent confidence level, lower limit is $658,270,000; upper limit is $757,536,000 (±7.01 percent).

3/ Midpoint estimate is $918,691,000. At 95 percent confidence level, lower limit is $858,180,000; upper limit is $979,202,000 (±6.59 percent).

4/ Midpoint estimate is $647,702,000. At 95 percent confidence level, lower limit is $598,884,000; upper limit is $696,521,000 (±7.54 percent).

5/ Midpoint estimate is $838,231,000. At 95 percent confidence level, lower limit is $778,334,000; upper limit is $989,127,000 (±7.15 percent).

EXHIBIT D

ESTIMATED REDUCTION IN OUTLAYS DURING FIRST YEAR OF ENACTMENT OF PROPOSED LEGISLATION

(Dollars in Thousands)

	No. of Veterans		No. of Estates Over $25,000		Reduction in Outlays
A. For All Veterans in Audit Universe					
Audit Sample / Audit Universe	968 / 14,839	=	601 / 9,213	=	$ 10,180 / $156,051 1/
B. For Veterans in Audit Universe Without Adult Children					
Audit Sample / Audit Universe	877 / 13,444	=	546 / 8,370	=	$ 9,235 / $141,566 2/

1/ Midpoint estimate is $156,051,000. At 95 percent confidence level, lower limit is $148,054,000; upper limit is $164,048,000 (±5.12 percent).

2/ Midpoint estimate is $141,566,000. At 95 percent confidence level, lower limit is $133,502,000; upper limit is $149,629,000 (±5.70 percent).

EXHIBIT E
Page 1 of 2

ESTIMATED REDUCTIONS IN OUTLAYS DURING VETERANS' LIFE EXPECTANCY
(Dollars in Thousands)

Life Expectancy (In Years)	Age Range (Inclusive)	Veterans In Sample		Veterans In Sample Without Adult Children	
		Number	Reductions In Outlays	Number	Reductions In Outlays
1	92	2	$ 32	2	$ 32
2	88-91	9	196	7	132
3	85-87	2	48	1	48
4	83-84	2	93	2	93
5	81-82	1	80	1	80
6	79-80	5	337	4	337
7	77-78	11	718	7	510
8	75-76	22	1,851	21	1,811
9	73-74	20	2,446	19	2,302
10	71-72	28	2,976	24	2,636
11	68-70	83	9,902	77	9,205
12	65-67	120	15,897	100	13,810
13	63-64	72	7,170	63	6,829
14	61-62	76	11,111	66	9,685
15	59-60	43	7,114	42	6,986
16	57-58	47	6,750	37	5,772
17	56	18	2,529	16	2,218
18	54-55	39	6,125	35	5,533
19	52-53	26	3,288	18	2,626
20	51	9	1,123	8	1,123
21	49-50	17	3,183	15	2,985
22	48	8	1,191	8	1,191
23	47	12	1,509	12	1,508
24	45-46	11	1,252	8	894
25	44	10	1,565	10	1,565
26	43	13	1,468	12	1,052
27	41-42	26	2,900	26	2,900
28	40	17	3,636	17	3,636
29	38-39	41	4,158	41	4,158
30	37	26	2,621	26	2,621
31	36	21	3,563	21	3,563
32	34-35	36	6,036	36	6,036
33	33	9	1,175	9	1,175
34	32	17	1,108	17	1,108
35	31	23	1,676	23	1,676
36	29-30	16	764	16	764
37	28	13	1,416	13	1,416
38	27	7	1,450	7	1,450
39	22-26	10	1,488	10	1,488
TOTALS		968	$121,945	877	$112,954

ESTIMATED REDUCTIONS IN OUTLAYS DURING VETERANS' LIFE EXPECTANCY
(Dollars in Thousands)

	No. of Veterans		Reduction in Outlays	
A. For All Veterans in Audit Universe				
Audit Sample	968	=	$ 121,945	
Audit Universe	14,839		$1,869,366	1/
B. For Veterans in Audit Universe Without Adult Children				
Audit Sample	877	=	$ 112,954	
Audit Universe	13,444		$1,731,527	2/

1/ Midpoint estimate is $1,869,366,000. At 95 percent confidence level, lower limit is $1,766,151,000; upper limit is $1,972,580,000 (±5.52 percent).

2/ Midpoint estimate is $1,731,527,000. At 95 percent confidence level, lower limit is $1,626,093,000; upper limit is $1,836,962,000 (± 6.09 percent).

Veterans Administration

Memorandum

Date MAR 11 1987

From Chief Benefits Director (273)

Subj Draft Report of Audit, Estates Maintained for Incompetent Veterans

To Inspector General (52)

1. The issue of inheritance of incompetent veteran's estates by remote heirs has been of concern to a number of parties for several years. Underlying, yet subject to debate, is the principle that VA funds were not intended by the Congress to be inherited by persons having no original entitlement to those funds. DVB is not prepared, at this time, to initiate a legislative proposal to preclude inheritance by remote heirs.

2. We find the entire issue to be significantly complex. The argument that remote heirs are sometimes enriched unjustly by inheritance is, on its face, somewhat compelling. The counterpoints include the matter of property rights and related concerns on constitutionality, as well as the potential for discriminatory handling of the cases of incompetent vs competent beneficiaries.

3. The considerations on either side of the issue run the gamut of philosophical, political and programmatic viewpoints. There is no clear and decisive position. We can acknowledge that benefit outlays can be reduced by placing a cap on estates of all incompetent beneficiaries. However, there is widely varying opinion on how such change could best be administered, and what personnel resource requirements would be necessary.

4. We believe the issue deserves a good deal more thought and analysis before any legislative proposal is generated. Among the unanswered questions are:

a. The legality of denying a beneficiary a right to an entitlement, or property rights.

b. Liquid assets may be converted to real property by purchasing a house for the beneficiary.

c. We believe that the service organizations and public at large will see this proposal as a denial of basic entitlement rights that are enjoyed by other classes of VA beneficiaries. The Agency can ill afford such a negative appearance.

2.

TO: (52)

c. Any legislative proposal would create inequities in the distribution of funds. There are cases where persons in the proposed favored categories (children, dependent parents, etc.) have disowned the beneficiary while the beneficiary was cared for at the hands of "remote heirs."

4. These are among the issues that must be considered.

R. J. VOGEL

Veterans Administration

Memorandum

Date APR 13 1987

From Chief Benefits Director (20)

Sub Draft Report of Audit, Estates Maintained for Incompetent Veterans

To Inspector General (50)

1. We have again reviewed the proposal in the subject report and carefully considered the comments provided by the General Counsel and the Controller. Notwithstanding the removal of the question of the legal aspects of the proposal, our position has not changed and we do not plan a legislative initiative to preclude inheritance by remote heirs.

2. A number of aspects of the proposal still concern us:

a. Payment of VA benefits to a veteran is an entitlement, whether competent or incompetent. The dispersal of a veteran's estate upon death is a proper matter for probate. An argument could be made that competent veteran's estates (who die intestate) escheat to the federal government rather than to remote heirs. To single out incompetent veterans as a class for disparate treatment is inequitable.

b. The concept for the proposal has been compared to the $1,500 rule. While a strong rational basis exists for the $1,500 rule, no such rationale exists for this proposal. Veterans hospitalized at government expense and receiving VA compensation benefits are receiving two different tax supported benefits for essentially the same purpose. Because the incompetent veteran usually does not have the same obligations as the competent veteran while instutionalized, the estate accumulates. The Congress stated that assets accumulated while receiving these dual benefits should not enrich remote heirs. There is no evidence to indicate that the Congress believed at that time that it should involve itself with the general distribution of a non-institutionalized veteran's estate at the time of the veteran's death. In fact, the Congress made a conscious effort to stay away from estate distribution matters that are the responsibility of State probate courts.

c. Since the proposal is designed to prevent VA derived assets from devolving to remote heirs, we foresee problems in administration when VA funds are commingled with other assets as is the case in the majority of the estates supervised. The separation of VA and non-VA monies would be an administrative nightmare.

2.
Inspector General (50)

d. The conversion of liquid assets to real property remains a possibility. As interested parties in court appointed fiduciary cases we have a voice to object, but the court has the ultimate authority to decide the propriety of the conversion, and in many instances we suspect that such conversion will stand. Fiduciaries would clearly have the incentive to convert veterans' estates to real assets.

e. There will be little or no savings or accrual to the Department upon implementation. There will be a need for additional FTE to administer the program.

3. These concerns as well as those cited in our previous memorandum on the subject give us cause to hold our position.

R. J. VOGEL

APPENDIX 2

Veterans Administration

Memorandum

Date: MAR 23 1987

From: General Counsel (022)

Subj: Inheritance of Incompetent Veterans' Estates by Non-dependent Heirs

To: Assistant Inspector General for Auditing (52)

1. We have reviewed your draft proposal that would further limit opportunities for non-dependent heirs to inherit gratuitous benefit funds paid on behalf of incompetent beneficiaries. We commend you for your thorough study and excellent presentation.

2. As you are no doubt aware, Mr. Dudley Pearce of this office and Messrs. Garry Duncan and John Bilobran of your office informally worked out clarification of the language on minor points. We have no legal objection to the draft as revised. We do suggest that you consider substituting "non-dependent heirs" or "remote heirs." The policy considerations are, as you know, primarily ones for the Department of Veterans Benefits; therefore, we defer to that department regarding the policy considerations involved.

Donald L. Ivers

DONALD L. IVERS

VA FORM 2108
SEP 1984

Veterans Administration

Memorandum

Date MAR 2 1987

From Director, Office of Budget and Finance (Controller) (04)

Subj Draft Report on Incompetent Veterans

To Assistant Inspector General for Auditing (52)

1. The draft report concerning the inheritance of large estates by the remote heirs of an incompetent veteran, has been reviewed by members of my budget staff. The report states that in many of these inheritances, a significant portion of the estates assets are comprised of payments the VA has made to the incompetent veteran.

2. From the report's random sampling of nearly 1,000 incompetent veterans, it was determined that these veterans have, on average, estates with nearly $63,000 in assets, and that many estates (nearly 25 percent) in the sampling, had assets in excess of $100,000. In those cases where there are no immediate dependents, the estates assets are inherited by the veteran's remote heirs. In fact, the House Committee on Veterans Affairs has attempted to limit the amount that the distant beneficiaries can inherit from these estates.

3. This report recommends the introduction of legislation that would correct this situation by establishing a maximum limitation on the estates. Under the provisions of the report's proposal, all payments in excess of this limitation would be made to a trust fund at Treasury and used only if the estates balance fell below the limitation. At the time of the veterans death, the funds held in the Treasury trust account, would revert back to the Government. This maximum limitation is intended to prevent new, as well as existing estates that are currently under the limit, from growing "too" large. It should be noted that estates which already exceed the limit would not be reduced.

4. Based upon informal discussions with the Veterans Assistance Service (27), it is requested that legislation be considered to suspend payments to incompetent veterans once their estates reached a legislated maximum limitation level. A minimum balance would also be established to resume payments once the estate was below this level.

5. This proposal is similar to the Title 38 provision that allows the VA to suspend payments to hospitalized incompetent veterans. In this instance, once the hospitalized incompetent veteran's estate reaches $1,500, the VA suspends payments. When the estate balance falls below $500, the payments are then resumed until the maximum $1,500 level is reached. Whatever the level or the mechanism for implementing a ceiling on this inheritance, the concern for equity and fairness in the administration of the program should be the guiding principle and so stated.

6. It is understood that the Inspector General (52) and the Veterans Assistance Service (27) have discussed this issue. It is suggested that General Counsel's staff be included in these discussions. My budget staff is available to provide any assistance that may be required. If you have any questions please contact Mr. Michael Burke on (233-3401).

for CONRAD R. HOFFMAN

March 24, 1988

VARO ST. PETERSBURG, FLORIDA

19-88, we have 5,282 fiduciary cases. (2,960 legal custodians,
ed direct payments, 901 spouse payees, 167 institutional awards,
e court fiduciaries, and 925 individual court fiduciaries.)
require accountings on about 1,215 (23%). We close about 80
nth for various reasons. Fiduciary cases closed due to death of
ary are about 35 or 16% per year or 2.9 per month.

y cases requiring accountings over the last 12 months - 1,360
113 per month). Total estates - $59,676,732 (average of 43,880).
y 50% of the estate is derived from VA funds therefore the
state would be $21,940 or approximately $22,000.

ast 12 months, we have closed 35 fiduciary files, due to the
beneficiary. Their average VA income was $1,237 and other
Their average VA estate was $25,104 and other estate $24,752.
one spouse, one helpless child, eight sons or daughters, five
athers, 17 brothers or sisters, one uncle, one nephew and one
in. Total VA estates - $878,631, non-VA - $866,307 for a total
ates $1,744,937.

83, we have had six cases with potential escheat for a total of
Actually escheated to the VA - $5,504.50, potential escheat to
,776.00 for a total of $22,280.50. Distributed to heirs -

Andrew Carvana
XC 4 236 417 (3202e)

This 100% service-connected vet was under guardian/conservatorship of a Michigan corporate guardian. When he died, ostensibly intestate without known heir-at-law, the Probate Court appointed a Public Administrator as Personal Representative. The bank turned over approximately $250,000. After we filed our Appearance and after several court appearances, the Maltese Consul came forward as the representative of a nephew who was able to submit adequate proof of heirship at a hearing for determination of heirs, to the satisfaction of the State Public Administrator and the VA. We had filed pursuant to 3202(e) all funds in the estate being derived from VA benefits. (Case closed)

Frank Osuch
XC 21 784 166 (3202e)

Veteran 100% service-connected, was under guardian/conservatorship of corporate fiduciary. Fiduciary advised of his death and that vet died intestate leaving no known heirs-at--law and that decedent veteran's estate was approximately $108,000. We filed an appearance and the usual court appearances took place. Public administrator and Personal Representative of decedent estate cooperated. We successfully objected, at a hearing for determination of heirs, to an alleged sister in Poland as an heir-at-law because of insufficient documentation; however, at a subsequent hearing, a first cousin was able to file documentary proof to establish his claim for the residue.

Wah Sik Ong
XC 16 999 341 (5220)

This 100% service-connected vet died in a VAMC leaving an estate of $200,000, still growing because of interest. According to the former guardian/conservator, a corporate fiduciary, the vet died intestate, without surviving heirs--at-law. We filed the usual appearance and appeared in court, as an interested party with the State Public Administrator and Personal Representative of the estate. Two alleged Chinese heirs came forward and we had several meetings with the State Public Administrator and the attorney for the alleged heirs-at-law, brothers, one of whom submitted inadequate proof of birth in China, while the proof of the other alleged brother appears to be more substantial. We are still in court on this case and will scrutinize all documentary and other evidence before conceding that at least one brother may be a legitimate heir. We filed pursuant to 38 USC 5220. During settlement negotiations the oldest of the two alleged heirs-at-law died leaving the younger alleged surviving heir. Compromise collection, VA 60%, $138,271, alleged surviving heir 40%.

Wayne Lampman
XC 3 539 488 (3202e)

On 12/18/86 FOA Bank advised that veteran died leaving approximately $90,000 in the hands of the fiduciary. We also found that the veteran had an estate in the State of New York, exact amount unknown. Stipulations were entered with the Attorney General of the State of Michigan prorating VA and other income with expenses, the residue to go to the VA 88% and the State of Michigan 12%. Good cooperation from State Public Administrator.

Joseph Mescal
XC 5 537 339 (3202e)

FOA Bank notified us November 28, 1986 that veteran died in State of New York November 28, 1986 and that he had some funds in a bank account in the State of New York and that the bulk of his estate was in Michigan. Jurisdiction remained in Michigan since veteran was incompetent and could not legally change his domicile. Correspondence and telephonic contacts with Kings County Public Administrator in New York and Personal Representative of decedent estate in Detroit. So far collected $85,000, $5,000 being retained by Personal Representative for possible IRS payment. Additionally, Kings County Public Administrator, State of New York forwarded to PR $9,676 so that we expect an additional collection exceeding $10,000.

Lee J. Gallagher
XSS 294 03 8408 (5220)

Attorney General called August 6, 1987 advising us of a contested (show-cause) case in which they had discovered a VA interest pursuant to 38 USC 5220, the veteran having died in VA Medical Center Allen Park, intestate, leaving no known heirs at law. The estate consists of approximately $33,000 in a bank account and a $9,000 promissory note made out by a friend and prodigy to the veteran in connection with a purchase of the veteran's home. There appeared to be undue influence in that the prodigy while taking the dying veteran to VA Medical Center Allen Park, had stopped at the veteran's bank to change the veteran's bank account into a joint account. A trial date has been set for the latter part of May, 1988. The State Public Administrator is supporting the Veterans Administration in claiming the residue of this estate.

Edwin J. Mellen
XC 1 533 900 (5220)

Veteran died November 2, 1987 at VA Medical Center Allen Park. We were notified of his death by way of a "disposition of funds" request from the hospital. The veteran was the sole heir of his wife's estate who expired on July 22, 1986 of which the hospital was not aware. Upon investigation we found that the wife's estate held 300 shares of Mobile Oil Stock at an approximate value of $12,000. We contacted the State Public Administrator to establish a decedent estate, liquidate the Mobil Oil Shares and we are claiming the residue for the United States to be placed into the General Post Fund. The hospital was directed to place the amount on deposit of $7,785 into the General Post Fund.

Walter C. Brasher
XC 14 432 686 (5220)

We were notified by the Details Clerk of VA Medical Center Battle Creek that the veteran expired on January 22, 1988 and that he was under guardianship in Ionia County. There are no known heirs-at-law and the estate in the hands of the guardianship amounts to $77,267. Notice was given to the State Public Administrator and we were promised the State's cooperation in claiming the residue from the Public Representative which was appointed. The residue, when collected, will be placed into the General Post Fund.

KREPPS, George P.
XC 3 682 465

After Receiving a memorandum from the Veterans Services Officer advising us that the veteran died January 21, 1988 we ascertained that he left an estate of $194,976. We contacted Comerica Bank, conservator; however we were advised that the veteran had not died intestate and his estate had been bequeathed to individuals by a last Will and Testament, who were not related to him. In addition there is a $10,000 GI Insurance Policy to go into the estate. The devisees are the vet's home care sponsor and her daughter-in-law. The testamentary PR is the sponsor's daughter. A second cousin has emerged who has contacted the attorney who prepared the Will.

Statement of

R.J. Vogel

Chief Benefits Director

before the

Subcommittee on
Compensation, Pension and Insurance

March 24, 1988

Mr. Chairman and Members of the Subcommittee:

We appreciate and welcome the opportunity to address the Subcommittee to give you our views on an issue that involves thousands of incompetent beneficiaries and the payments of benefits to those beneficiaries that exceeds $1 billion per year. We will focus our remarks on the recommendations contained in the Inspector General's report No. 7R3-B01-065 on the disposition of deceased incompetent veteran's estates.

The Veterans Administration supervises the payment of approximately $1.08 billion to fiduciaries on behalf of 124,666 incompetent or legally disabled beneficiaries. While we do not keep any statistics on the total of income and estates from all sources that accrue to these beneficiaries, we have estimated that the amount is somewhere in the neighborhood of $3.5 to $4.5 billion .

When a beneficiary dies, the estate is subject to the probate statutes of the State wherein the decedent had residence. Unless the VA benefits portion of the estate is subject to escheat, the case file is closed pending receipt of the fiduciary's final accounting, if appropriate, or evidence that the estate has been turned over to the executor of the estate. When it appears that the estate will escheat to the State of residence, the fiduciary is notified to return the VA portion of the estate to the VA under the authority of 38 U.S.C. 3202(e).

How have these estates accrued to their current levels?

Conservative management and inflation. Many of these estates are under the control of court-appointed fiduciaries who are generally bound by State statute to conserve the assets as much as possible. At times we have found that this philosophy has been too conservatively followed and we take action as necessary to assure that the beneficiary receives the benefit of the moneys available; however, this does not prevent the accumulation of estates through wise investment. Additionally, many of the estates grew by leaps and bounds during the period when the interest rates on investments were soaring.

Although records are kept in the individual case files on the amount of estates in accounting cases, the VA does not keep a record of the total breakout of all the estates we supervise, nor do we keep a record of the disposition of those estates upon the death of the beneficiary. In order to obtain this information we would need to perform a manual audit of thousands of case files, an extremely labor intensive process.

The issue that the IG raises about the accumulation and distribution of an incompetent veteran's estate is not a new one. It has been considered off and on for almost 65 years. We hope that the following information will fully explain why the Department of Veterans Benefits has opposed the IG's recommendations relative to the "remote heirs" issue.

One of the key issues concerning the topic of remote heirs is the "intent of Congress." This phrase has been readily used by GAO, the VA's IG and others, but without any real analysis of what the intent was. The often stated intent of Congress, to prevent accumulated VA estates from going to remote heirs, has been used out of context. The Department of Veterans Benefits believes that the Congress historically has used a rational basis to narrowly define the universe of veterans subject to limitations on accumulated estates. This universe has been defined to be only that group of incompetent veterans who are INSTITUTIONALIZED AT GOVERNMENT EXPENSE. It is the institutionalization that is the key element and justifies what otherwise would be, in our view, discriminatory legislation.

The immediate issue of what to do about estates of incompetent beneficiaries has been under consideration for a long time.

As far back as 1924, the Congress had considered legislation to keep estates of hospitalized, "insane" veterans from accumulating. Pub. L. 68-242, the World War Veterans Act of 1924, in addition to creating the U.S. Veterans Bureau under the direction of Gen. Frank T. Hines, signaled the beginning of such legislative actions. Section 202(7) of the Act stipulated that:

> "Where any disabled person having neither wife, child, nor dependent parent shall...have been maintained by the bureau for a period or periods amounting to six months in a neuropsychiatric hospital or hospitals, and shall be deemed by the director to be permanently insane, the compensation for such person shall thereafter be $20 per month so long as he shall thereafter be maintained by the bureau in a neuropsychiatric hospital or hospitals; and such compensation may in the discretion of the director, be paid to the chief officer of said hospital to be used for the benefit of such patient...."

In 1930, two significant events took place. The Veterans Administration was created, and concurrently, Pub. L. 71-522, An Act to Amend the World War Veterans Act of 1924, was signed into law. Pub. L. 71-522 contained a number of important provisions. Among them were amendments to sections 21 and 202(7) of the World War Veterans Act of 1924.

The new language added to Section 21 of the WWVA of 1924 created the escheat provision now contained in 38 U.S.C. 3202(e), i.e., any funds derived from benefits paid by the Veterans Bureau in the hands of a fiduciary at the time of the death of a minor or incompetent beneficiary would be returned to the Federal Government when such funds would otherwise escheat to the State of residence of the decedent.

It is important to note that this amendment was proposed by the U.S. Veterans Bureau. Further, during the hearings on the proposed amendments, Gen. Hines indicated that he had no objection to the estates going to relatives as heirs. He did not think that the money should go the the States, though.

During this same hearing, the discussion turned to the proposed amendments to Section 202(7). Because of the concern for the size of the estates that were accumulating for hospitalized, insane veterans, even with the reduction to the $20 rate, the U.S. Veterans Bureau proposed that a limit of $3,000 be placed on the estates. Benefits for beneficiaries with estates above the limit would be suspended and not started again until the estate fell below the $3,000 limit. The estates in question were those derived from funds paid under War Risk Insurance or derived from World War Veterans Act of 1924 benefits. Apparently, outside assets were not of any concern. We could find no evidence of any discussion by the committee on this particular proposal. The proposal seems to have been adopted purely on the weight of having originated with the Veterans Bureau. In fact, there is more discussion and concern expressed for tuberculosis patients than the suspension of payments to mentally disabled veterans.

Since the intent of Congress is important to the discussion on the remote heirs issue, it becomes incumbent upon us to try to determine what that intent was: however, on the basis of the foregoing information we could not come to any conclusion as to the intent of Congress in legislating this first estate limitation provision. Since we could not assess the Congress' intent, and since the proposal came from the Veterans Bureau, it is necessary to look at the intent of the Bureau in proposing such legislation. We have already pointed out that Gen. Hines testified that the Bureau had no objection to Federal estates being inherited by relatives, but believed the estates just should not go to the States. This then, by virtue of the language contained in the statutory amendment, leaves us with the conclusion that the Bureau's only concern was for the accumulation of Federal estates while the veterans were hospitalized. There is no indication that the size of the estates of non-hospitalized, incompetent veterans was of any concern even though the estates were considerable according to the testimony from Gen. Hines on the escheat provision.

Three years later, Pub. L. 73-2, the Economy Act of 1933, An Act to Maintain the Credit of the United States Government, was signed into law. Section 202(7) of the World War Veterans Act of 1924 was again amended. This time, the $3,000 limit was dropped in favor of a $1,500 upper limit and a $500 lower limit, below which the benefits would resume.

One of the keys to understanding the historical Congressional intent as applied to the estates of incompetent veterans lies in the significance in this amendment. The amendment needs to be looked at in the context of what was happening economically, socially and politically. This was the time of the Great Depression. The Government was undergoing a microscopic review to find ways to cut corners and save money. Many radical plans were being devised and seriously considered. Agencies were being abolished and combined with others, staffing was being reduced, Federal pay was cut and proposals were being made to revamp many benefits programs, all in the sense of an urgent need to economize. Through it all, we could find little evidence to indicate that the estates of incompetent veterans other than those who were hospitalized were ever considered for limitations of any sort.

We did find one statement that on face value would seem to support the argument that Federal benefits estates of non-hospitalized, incompetent veterans were the target of the legislators. The Chairman of the Committee on the Economy, in Report No. 1126 to the House of Representatives on April 25, 1932, stated, in part, that estates should not be allowed to build up to be inherited by distant relatives who have no right to expect any particular relief from the Federal government. This statement, however, needs to be examined in the context of the overall discussion. The Chairman was speaking about the need to carry forward existing legislation containing estate limitation criteria for incompetent, hospitalized veterans.

One would think that if the intent of Congress was to prevent large estates of incompetent veterans outside of the institutional environment from passing on to "distant heirs," then this would have been the time to enact such legislation. The fact that the Congress took no such action leads to the conclusion that the intent of Congress was to deal only with the estates of incompetent veterans who were institutionalized at public expense and in receipt of additional benefits while institutionalized.

The next and last major attempt to enact legislation to deal with the remote heirs issue occurred in 1959 with the passage of Pub. L. 86-146. This piece of legislation, according to Congressional testimony, was specifically designed to not only prevent large accumulations of gratuitous benefits for incompetent veterans, but to prevent these large estates from passing on the death of the veteran to persons having no equitable claim to such benefits. As in the past, the legislation dealt only with institutionalized, incompetent veterans.

In order to fully understand the intent of Congress as it relates to the current issue, it is important to look at some of the background of Pub. L. 86-146.

In 1956, The Honorable Olin Teague, Chairman, HVAC, introduced a bill that would address the remote heirs issue. Among other things, the bill called for the recoupment of all deceased, incompetent veterans' estates derived from VA benefits, whether paid on or before enactment of the proposed law. The bill died because of a number of problems in legal, technical and administrative areas.

Mr. Teague tried unsuccessfully to do something about accumulated estates a number of times over the next three years. At one point in 1958, the Veterans Administration suggested that a cap be placed on the size of the accumulated estates. The withheld amounts would be payable to the veteran after he regained competency.

Again, no action was taken on the proposal.

In early 1959, Mr. Teague introduced H.R. 4302. This proposal deleted the earlier recapture provisions, but it retained the controls to prevent large accumulations of benefits during the incompetent veteran's lifetime. It included a provision to extend the $1,500 estate limitation rule to institutional care provided by all levels of government (Federal, State and local). This bill also contained a cap provision.

H.R. 4302, like its predecessor, ran into trouble. During the latter part of 1959, H.R. 6319 was introduced as a redraft of H.R. 4302. This bill eliminated the proposed ceiling, or cap, on accumulation of estates.

H.R. 6319 became Pub. L. 86-146 in December of 1959.

It seems from the foregoing, that the clear intent of Congress was to limit the estate accumulation and distribution only under conditions where an incompetent veteran was receiving the benefit of institutionalized care at public expense. We believe that from the historical point of view the Congress has shown that it did not intend to meddle in the affairs of incompetent veterans who were not receiving the dual benefits of monetary awards and institutional care.

The issue of remote heirs lay dormant until 1980 when the Chairman, HVAC, Ray Roberts, received a letter from a VA District Counsel complaining that a large VA estate had been inherited by heirs who were foreign residents. Mr. Roberts asked the GAO on September 17, 1980, to investigate the matter.

The GAO issued its report, Legislation Needed To Prevent Loss Of Millions From Mentally Incompetent Veterans Estates, HRD-82-1, dated February 10, 1982. The GAO recommended that the Congress amend Title 38 to require the recapture of remaining VA estates at the time of death of the incompetent veteran unless there existed a surviving spouse, child or dependent parent. The GAO also suggested that the VA change the way the Agency calculated the residual estates by doing away with the VA's "presumption of use" concept. The recommendation essentially expanded the treatment given to Personal Funds of Patients funds under 38 U.S.C. 3202(d) to the estates of all incompetents. We took issue with the recommendation on a number of levels such as apparent deficiencies in the analyses of the size of the residual VA estates, the amounts to be recovered annually, constitutionality of the proposal, and the potential burden on the public and the Agency.

Legislative proposals based on the GAO recommendations were prepared and presented to the VA for technical review. In the context of providing technical assistance, the Agency expressed concern with the proposed bill. Pressure was brought to bear on the Agency to present alternative proposals and the VA offered two:

One to create a cap on the size of the estate; and,

The other, to create a supervised veterans trust (SVT) whereby benefits surplus to the veteran's immediate needs would be diverted to a trust fund maintained by the Treasury.

The VA was not comfortable with the idea of the cap; however, given the history of the issue and the Congress' reaction to recoveries and caps, it was hoped that the cap would be discounted as a viable alternative.

The Agency was a little more comfortable with the supervised veterans trust concept, but we could not prove at the time that this proposal was any more cost-effective than the others. The SVT would require increased field examination and estate administration activity of unknown proportions. The other unknown was the start-up cost at Treasury. This proposal, like the others, lacked the one feature that would make it most appealing. There was no immediate recoupment of the enormous amounts of money claimed by the GAO.

None of the proposals was adopted.

This brings us to the current issue involving the IG's recommendation.

The IG recommends that DVB propose legislation that would prevent remote heirs from inheriting surplus estates derived from VA benefits. More specifically the IG suggests a cap on the estates, with benefits either withheld or placed in a trust. DVB disagrees with this recommendation. Besides being redundant of previous proposals which were rejected by the Congress in the past, there are other considerations:

1. One of the pivotal questions in this discussion revolves around the composition of the estates that are being inherited by remote heirs. This same issue developed during the GAO study of 1982 on the same subject. At that time, the VA did not dispute the size of the average estate, but we did question the composition of the estate. Likewise, we cannot vouch for the accuracy of the estate data used by the IG.

The IG asked for estate data going back to only 1983. Most of the Agency's fiduciary cases are much older than that. Some began with non-VA assets such as inheritances or the proceeds from the sale of real property. If the case originated prior to 1965, the errors in the Estate Summaries are compounded due to changes in the way the information was recorded. From 1963 to 1965 the Estate Summary form, the document upon which the IG based the assessment of the size and composition of the residual estates, did not accommodate reporting VA and non-VA assets separately. Any estate going back beyond 1965

may, in fact, have had non-VA assets, but, they were not shown as such. When the form was again changed and residual estates were divided into VA and non-VA assets after 1965, many estate analysts arbitrarily lumped the entire estate under VA for potential escheat purposes.

Another problem associated with trying to identify the composition of the estates arises when the various incomes are commingled. The VA has for years used a rule of thumb called the " presumption of use." By means of this rule it is to be presumed that the Congress created the gratuitous benefits to be used by the beneficiaries for their care and maintenance, to provide for their needs and those of their dependents. Therefore, VA benefits are considered to have been used before any other income regardless of source. Application of this principle reduces or eliminates the VA estates in many cases.

As pointed out to the GAO in 1982, there seems to be an adequate amount of VA legal opinion to support the validity for using this concept to determine the composition of the estate. Unfortunately, as the IG correctly points out in their report, our own technical personnel are not applying the presumption of use concept uniformly across the country.

Because of these inaccuracies and others that we have found during our quality review validations performed at Central Office, no valid assessment of the composition of the estates can be made on a review of the Estate Summary form alone. While the IG reviewed a sampling of source files, the Principal Guardianship Folders, we have not had the opportunity to validate the accuracy of the IG's review.

Except for cases where VA benefits are the sole source of income and the estate is fully derived from VA benefits, the IG's proposal is indiscriminate and could affect non-VA estates as well. We do not believe that the Federal government has any business involving itself with the potential distribution of non-Federal estates. That is the prerogative of the States.

2. As pointed out earlier, the Congress historically has taken great pains to remove itself from involvement with probate matters, matters that are the sole responsibility of the States. This is a States' rights issue.

3. The recommendation will create a burden on resources:

a. Fiduciaries would be more likely to invest the veteran's assets in real property or spend the money in ways that would require the VA to formally object. Objections from the VA would involve additional expenditures from DVB and the General Counsel because many of these estates would be held by court-appointed fiduciaries. We have no way of calculating this expected cost. We believe that the State courts, being sensitive to the rights of the States and interests of the States' citizenry, would overrule the VA's objections. Investments in real property, jewelry, precious metals and gems would not be unthinkable. The Agency would be hard pressed to argue against the use of VA compensation benefits in this manner when there are competent 100 percent service-connected veterans who are fully employed and who either accumulate the VA benefits or use them to provide the luxuries of life without any objections from anyone.

b. Leaving a residual estate in the hands of the fiduciary to manage would do nothing to reduce the Agency's obligation to supervise the management of that estate. We would incur the same costs at minimum, and uncalculated costs at the maximum, if more field examinations and accountings are necessary. It is also possible that because of the delay between the time that the estate exceeds the prescribed maximum and the time that we become aware of it, that there will be an increase in accounts receivable activities as overpayments are created. This happens now on a much smaller scale under the $1,500 rule, and, as happens with the $1,500 rule, we can expect legal challenges to increase. The fact that the Agency will most likely prevail in these challenges is not the issue. The issue is that we will be forced into court to defend our position at some cost to the Agency.

c. Our ability to find and appoint qualified fiduciaries for some of our most difficult cases will be significantly reduced. We have about 11,000 veterans under corporate court fiduciaries at present time. Many of the banks performing this responsibility do so only to increase their cash flow or to make a little gain based on the commissions received on the veterans' income. We believe that many of the larger more solvent banks will ask to be discharged by the courts. Many are willing to put up with what they consider to be nuisance cases, but only for adequate compensation. We also have no way of knowing what the potential impact would be on the financial industry if the Government were to remove hundreds of millions of dollars from circulation over the next few years.

4. The IG states that the proposal would reduce Federal outlays. That is true, but a reduction in outlays is not the same as a saving. The annual savings would be minimal compared to the estimated amounts of reduced outlays. Money would be recouped over a period of years. There is no quick fix. Funds must still be obligated in order that they be paid into the trust or just placed under a withholding where, for estate purposes, the money does not exist. We would in fact be denying veterans benefits to which they are otherwise entitled. We estimate that only $2.4 million would be actually recouped in the first year. These amounts are calculated as follows:

9,200 (veterans with estates in excess of $25,000)
$1355 (100% SC monthly benefits in FY 87)
9,200 x $1355 x 12 mos.= $149,592,000 diverted in the first year.

However, this is not a saving. Funds are not recouped until after the veteran dies. Suppose, then, a mortality rate of 1.6% for this group of veterans. The government would recoup out of the $149.5 million only those funds belonging to the deceased veterans, or $2.4 million in the first year.

9,200 x 1.6% x $1355 x 12mo.= $2,393,472

So, for an actual savings of only $2.4 million in the first year, compared to the IG's estimate of $156 million in reduced outlays, we would threaten small rural banks in this country's financial industry by removing $140 million, or more, per year from an industry that appears to be in serious trouble.

5. Suspension of payments to a fiduciary creates the appearance of denying veterans their benefits, whether or not the suspension is triggered by a cap, and whether or not the suspension results in withheld funds or a trust fund administered by the Treasury.

6. Any proposal to suspend or divert VA benefits based on the size of the estate or actual monthly consumption significantly changes the way compensation benefits are viewed. The legislation would debase compensation and change it into a needs based benefit, little different from pension.

7. There is no equity as to the distribution of the assets under any proposal to alter the accumulation of VA estates. The fact that a son or daughter may inherit the estate does not speak to the fact that it may have been the veteran's brother, sister, or some other relative who provided the love, care and attention needed over the years. Then too, the probate courts have been the proper vehicles for deciding equity in estate distribution. We recently received information about a case in Maine where a spouse of a veteran who was brain-damaged and had been in a VA facility for the last ten years will inherit his VA estate which is in excess of a quarter of a million dollars. The spouse has had nothing to do with the veteran since before he was injured, never visited him in the VA hospital, and has lived with another man, ostensibly as his housekeeper.

SUMMARY

The intent of Congress, with respect to the remote heirs issue, has been to narrowly define the universe of veterans to whom any attempts at estate manipulation would apply. That universe has been limited to those incompetent veterans who are without dependents and institutionalized at government expense.

The Congress has intentionally refused to deal with the estates of non-institutionalized veterans, incompetent or otherwise, through recapture provisions or limits on the size of the estates.

We believe that given the historical intent of the Congress and our long experience in the Fiduciary Program that the best interests of the beneficiary would be served by not proposing legislation as contained in the Inspector General's report.

DAV

Motto: "If I cannot speak good of my comrade, I will not speak ill of him."

DISABLED AMERICAN VETERANS

NATIONAL SERVICE and LEGISLATIVE HEADQUARTERS
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April 4, 1988

Honorable Douglas Applegate, Chairman
Subcommittee on Compensation, Pension
and Insurance of the House Committee
on Veterans Affairs
335 Cannon House Office Building
Washington, DC 20515

Dear Chairman Applegate:

On behalf of the more that 1 million members of the Disabled American Veterans and its Ladies Auxiliary, I take this opportunity to write to you concerning the Veterans Administration Inspector General (VAIG) report of May 28, 1987 entitled "Audit of the Estates Maintained for Incompetent Veterans", which was the subject of a hearing held by your Subcommittee on March 24, 1988.

At the outset, I wish to commend you, Mr. Chairman, and the members of the Subcommittee on this exercise of your oversight responsibilities relative to the operation of the Veterans Administration Fiduciary Program. Your continued interest in the welfare of our nation's wartime service-connected disabled veterans is truly appreciated.

Mr. Chairman, as you know, the DAV has always attempted to work closely with the Veterans Affairs Committees in all reasonable efforts to identify areas in which federal dollars may be saved through the elimination of waste and the promotion of efficient management.

As we understand, the purpose of the VAIG audit was to assess the need for changes in the VA Fiduciary Program in an attempt to: (1) minimize the inheritance of VA derived funds by remote heirs; (2) reduce the Fiduciary Program's vulnerability to fraud and abuse and; (3) reduce federal expenditures.

Mr. Chairman, we certainly agree that every effort should be made to protect the estates of incompetent veterans from fraud and abuse by unscrupulous individuals who wish to profit at the expense of service-connected disabled veterans. However, we believe that the legislation proposed by VAIG to place a cap on the estates of incompetent veterans would deny these

individuals just compensation earned as a result of their service-connected disabilities.

Mr. Chairman, as I'm sure you will agree, service-connected disability compensation payments are an "entitlement" earned by service-connected disabled veterans based upon the occurrence of a service-connected disability. To place a cap on estates of these service-connected disabled veterans is tantamount to means testing their compensation payments. The DAV is adamantly opposed to the means testing of service-connected disability compensation benefits.

We also wish to point out that banks are currently compensated for their Fiduciary services by receiving a specified percentage of the total assets in the account. By limiting these estates (and, by implication, fees paid to fiduciaries) the VA may encounter difficulty in finding banks to administer the estates of these veterans.

Mr. Chairman, limiting the number of heirs eligible to receive the proceeds of an incompetent veteran's estate to the "immediate family" (as defined in the IG report as a spouse, child or dependent parent) is, in our view, inappropriate. In most instances, brothers, sisters, grandparents, aunts, uncles and cousins are considered immediate family, as the Supreme Court has noted. See Moore vs. City of East Cleveland, 431 U.S. 494, 504 (1977) (the institution of the family includes more persons than simply "nuclear family").

Also, there are many cases where family members, other than the "immediate family", (as defined by the IG), have provided loving care and companionship to incompetent veterans throughout their lives. To deny the right of inheritance to these individuals would be truly unfair and not in keeping with the wishes of the veteran.

Further, the IG's proposal is not clear as to whether a remote heir could inherit VA derived assets under an incompetent veteran's valid will. The will may have been drawn while the veteran was still competent or, alternatively, his incompetency for VA benefit purposes may not have resulted in a loss of testamentary capacity. In any case, the DAV opposes any effort to override veterans' valid wills.

In addition, should this proposal be enacted into law, can we anticipate that the IG will then seek the enactment of legislation to claim the estates of competent veterans who have no "immediate family" (as defined by the IG) at the time of their demise?

As you will recall, Mr. Chairman, the VA's Department of Veterans Benefits (DVB) also had some difficulty with the IG's legislative recommendations. In their letter to the IG, and in testimony before your Subcommittee on March 24, 1988, DVB

expressed their concerns which parallel, to some degree, the concerns of the DAV.

While I will not repeat here all of DVB's concerns, I would however point out that DVB disagreed with the savings ascribed to the IG's suggested legislative changes. They indicate there will be little or no savings to the VA with the implementation of the IG recommendations and, to the contrary, there will be a need for additional Full Time Equivalent Employees (FTEE) to administer the program.

Mr. Chairman, as stated earlier, the DAV has always attempted to work with the Veterans Affairs Committees in an effort to identify areas where federal dollars may be saved. However, I again wish to strongly emphasize our concern that legislation to cap the estates of incompetent veterans treads on the strongly held belief of the DAV that VA disability compensation payments are "entitlements." Changing this fundamental principle for incompetent service-connected disabled veterans, we believe, would treat this category of service-connected disabled veterans in a disparate manner and would establish the precedent of means testing VA compensation payments.

In closing, Mr. Chairman, I wish to again thank you and the members of the Subcommittee for your continued efforts on behalf of America's service-connected disabled veterans and their families. I also trust that our views on this important subject will assist you and the members of the Subcommittee in your future deliberations of this issue.

Sincerely,

Gene Murphy

GENE A. MURPHY
National Commander

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STATEMENT FOR THE RECORD
BY
PARALYZED VETERANS OF AMERICA
REGARDING
THE INSPECTOR GENERAL'S AUDIT
OF
ESTATES MAINTAINED FOR INCOMPETENT VETERANS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
OF THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
MARCH 24, 1988

Mr. Chairman and Members of the Subcommittee, the Paralyzed Veterans of America wishes to thank you for conducting this hearing on the Inspector General's report on payment to incompetent veterans. We appreciate the opportunity to provide you this written statement for the record.

It should be noted at the outset that PVA feels the I.G. report is legally, fiscally, and morally sound. We support the recommendations contained in this audit of estates maintained for incompetent veterans (I.G. Report number 7R3-B01-065; May 28, 1987). Specifically, we support legislation authorizing the VA to (1) limit the amount of funds held by fiduciaries of incompetent veterans subject to inheritance by relatives other than spouse, children, or dependent parents; and (2) provide for additional staff to administer the VA's oversight responsibilities.

We agree that, in far too many instances, the estates of incompetent veterans (consisting primarily of VA benefits) have enriched distant relatives who may have had very little to do with the veteran while he was living. The Veterans Administration has an obligation to provide assistance to disabled veterans and their immediate families including dependent parents; however, we do not feel it was the intent of Congress that remote heirs should benefit from incompetent veterans' estates. We certainly recognize that there are instances when a remote relative provides care for an incompetent veteran. In these cases, it is incumbent upon the fiduciary to adequately compensate such persons. It is the fiduciary's responsibility to ensure this is done in an equitable manner.

PVA's principal concern is with the Chief Benefits Director's statement that no savings would accrue to the Department, and additional staff would be required to administer the program. Although we are convinced that the proposal would reduce outlays, we strongly urge that such savings be reprogrammed into additional staffing for VA fiduciary personnel. With the decline in DVB staffing over the past decade, fiduciary personnel have been hard pressed to meet minimal quality-of-service standards. Faced with long hours of travel, often to remote rural areas, these critical employees simply cannot provide adequate field examinations for the large number of incompetent veterans in need.

PVA feels the recommendation of the Inspector General is appropriate and would be in the best interest of the VA and the beneficiaries of the fiduciary program. We feel that, if enacted, the reduced outlays could be translated into an enhanced program that could better serve this segment of the veteran community.

PVA wishes to thank the Subcommittee for the opportunity to present our views on this I.G. report. We look forward to working with you to eventually implement an equitable and just program.

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